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The *habeas corpus* case of *In re* Gunn, which is reported on page 275 of this issue, wherein the Supreme Court of Kansas decided certain questions relating to the valid organization of the House of Representatives of that State, has a legal as well as political value. It involves questions in the law governing elections and organization of legislative bodies which are of exceeding interest to lawyers, courts and legislators. The proceeding was brought by Gunn who had been arrested by the House of Representatives, known as the Douglas House, for his discharge, upon the ground that that house was not properly organized and was not the constitutional House of Representatives of that State. Under the constitution and laws of the State the house consists of 125 members. At the time that Gunn was arrested for refusing to obey a subpœna to testify in an election case, concerning the seat of a member of the legislature, the Douglas House consisted of sixty-seven or four more than a quorum. The other house known as the Dunsmore House consisted of fifty-eight members. These two bodies held their sessions in the same hall or room for weeks and each finally called for their support and protection, armed bodies of men. It is a matter of gratification as well as a strong evidence of the inherent respect of the people for the decrees of courts, that after the decision of the Gunn case peace was proclaimed, the Douglas House was recognized by the Dunsmore House, the governor and senate, and the proceedings of the legislature thereafter were carried on peaceably, effectively and legally. Looking at the matter from a strictly legal standpoint and ignoring the question of politics, with which we have nothing to do, the decision of the court seems to us entirely correct and the logical deduction from the authorities.

The decision of the United States Supreme Court in Horner v. United States, should be instructive to merchants and newspaper proprietors who are carrying on "gift enterprises" and "guessing contests" as a means of inducing trade or increasing their circulation. In the case referred to the defendant was convicted under the federal statute for advertising Austrian bonds and sending through the mails a circular containing a list of prizes awarded at a drawing. It seems that in 1864, the Austrian government, to raise a loan of 40,000,000 florins, issued bonds, each of which was for 100 florins and bore upon its face the number of the series to which it belonged, and its number in that series. The bonds were not payable at any day certain, but the date of payment was to be determined by drawings, whereby it was determined which series was to be redeemed, and the amount to be paid for each bond. For the first ten years there were to be five drawings a year; for the next ten years, four drawings a year; for the third ten years, three drawings a year; and thereafter, up to and including the fifty-fifth year, there were to be two drawings a year, at the end of which time all the bonds were to be paid. Under this plan the smallest amount to be paid for any bond thus selected for redemption during the first year was 135 gulden; during the second year 140 gulden, during the third year 145 gulden, and so on increasing five gulden each year until the amount reached two hundred gulden, which amount then remained stationary until all were redeemed. In addition to this there were certain bonds to be paid in each year for which large sums were to be given, ranging from 250,000 gulden to 400 gulden, and these bonds were also to be determined by chance at the drawings.

Upon this state of facts the court held the scheme to be an enterprise offering prizes dependent upon lot or chance, and was in the nature of "a lottery" or so-called "gift concert" within the meaning of Rev. St. § 3894, as amended by the act of September 19, 1890, and that a person who sends through the mails a circular containing an announcement of the bonds redeemed at a certain drawing, and a notification of the time of subsequent drawings is guilty of a violation of that act. The court distinguished the case of Kohn v. Koehler, 96 N. Y. 362, which seems to be opposed to the current of authorities upon the subject.

The English courts have of late been called upon to decide as to the legality of what is

known as "missing word competitions," quite common with English newspapers, and now being introduced into this country. The English papers required the guesser to pay in a shilling, while ours only insist that the guess be written on a coupon cut from a copy of the paper, but both offer a prize to the one who guesses correctly the word or the number or whatever it may be. An English court in the case of the "Pick Me Up" newspaper has held the whole scheme to be a lottery and has ordered the money received, to be paid into court, under the terms of the Act of Geo. II, affixing a penalty for conducting a lottery. Though the question has not been passed upon by any of the higher courts, there seems to be an impression that such enterprises have received their death blow. It will be a subject of congratulation if the demoralizing propensity which such schemes have encouraged in this country could be effectively checked by the courts.

NOTES OF RECENT DECISIONS.

MARRIED WOMAN — PROMISSORY NOTE — CHARGE ON SEPARATE ESTATE.—The Supreme Court of the United States in an elaborate opinion prepared by Mr. Justice Field decide in the case of Ankeney v. Hannon, that a married woman having no power in Ohio to contract in reference to her separate estate previous to its existence, her promissory note, charging her separate estate with the payment thereof, cannot be enforced in equity against a separate estate acquired by her subsequent to the execution of the note. After stating the general rule that to charge the separate estate of a married woman with her engagement it must have been made with an intention on her part to create a charge upon such estate, the court referred to the divergency and conflict of opinion both in England and this country, as to what is necessary to establish such intention on the part of the wife. The numerous decisions in the High Court of Chancery of England have shown this divergency and conflict in a marked degree. Lord Thurlow placed the right of the wife to charge the property upon her right as owner to dispose of it without other authority. Hulme v. Tenant, 1 Brown Ch. 16; Fettiplace v. Gorges, 3 *Id.* 8. But this theory was afterward rejected by Lord Loughborough, who denied the liability of a married woman's separate estate for her general parol engagements, and explained the previous cases upon the ground that the securities which the wife had executed operated as appointments of her separate property. Duke of Bolton v. Williams, 2 Ves. Jr. 138.

The doctrine proceeded upon the assumption that the wife's separate estate was not liable for her general engagements, but only for such as were specifically charged in writing upon it. This theory Lord Brougham rejected, holding that there was no valid distinction between a written security, which the married woman was incapable of executing, and a promise by parol, and that mere parol engagement of the wife was equally effective to create a charge as her bond or note. Murray v. Barlee, 3 Mylne & K. 209.

The reasoning of Lord Brougham to establish his views was afterward met and rejected by Lord Cottenham. Owens v. Dickenson, 1 Craig & P. 48.

The Court of Appeals of New York, in the case of Yale v. Dederer, 22 N. Y. 450, considered very fully the evidence which would be required to charge the separate estate of the wife upon her contract, and in its examination reviewed the various decisions of the English Court of Chancery, pointing out their many differences and conflicts, and placed its decision upon this ground; that such estate could not be charged by contract unless the intention to charge it was stated in the contract itself, or the consideration was one going to the direct benefit of the estate. In that case a married woman signed a promissory note as a surety for her husband, and it was held, though it was her intention to charge such estate, that such intention did not take effect, as it was not expressed in the contract itself. In the case of Millard v. Eastham, 15 Gray, 328, the same question was elaborately considered by the Supreme Court of Massachusetts and the doctrine of Yale v. Dederer followed. Justice Field cites with approval the statement of the limitations upon the authority of a court of equity in relation to the subject, expressed by the Massachusetts court as follows: "Our conclusion is that when by the contract the debt is made expressly a charge upon the separate estate, or is expressly contracted upon its

credit, or when the consideration goes to the benefit of such estate or to enhance its value, then equity will decree that it shall be paid from such estate or its income, to the extent to which the power of disposal by the married woman may go. But where she is a mere surety, or makes the contract for the accommodation of another, without consideration received by her, the contract being void at law, equity will not enforce it against her estate, unless an express instrument makes the debt a charge upon it."

EQUITY JURISDICTION—INJUNCTION AGAINST COUNTY BOARD—LEGISLATIVE POWERS.—The Supreme Court of Illinois, in Stevens v. St. Mary's Training School, 32 N. E. Rep. 962, hold that a court of equity will not enjoin a county board from passing a resolution that an illegal contract be made by the county and that an illegal claim against the county be allowed, since that would be an interference with a legislative act. The conclusion of the court is that the weight of authority and the tendency of the more recent decisions is in favor of the position that the restraining power of the courts should be directed against the enforcement rather than the passage of unauthorized orders and resolutions or ordinances by municipal corporations. The opinion is by Magruder, J., and is an able exposition of the authorities, revealing the distinguishing points of the many apparently conflicting cases on the subject.

NEGOTIABLE INSTRUMENT—NOTE PAYABLE ON DEMAND—INTEREST.—Among other rulings by the Supreme Court of Michigan, in Nye v. King's Estate, 54 N. W. Rep. 178, it is held that interest does not begin to run on a note payable on demand after date with interest at a specified rate after maturity, until demand is made for payment. Durand & Grant, JJ., dissent from this conclusion, reviewing Hitchings v. Edwards, 132 Mass. 338; Fenno v. Gray, 146 Mass. 118; Wheeler v. Warner, 47 N. Y. 519; McMullen v. Rafferty, 89 N. Y. 456, and Palmer v. Palmer, 36 Mich. 487, which hold that a demand note is due forthwith and without any previous demand. Applying that rule they believe that interest should be allowed upon the note from its date.

The majority of the court, however, say that the cases cited by the dissenting judges are mainly cases where the question arose as to whether the note involved was barred by the statute of limitations, and it was held that the note became due for the purpose of setting the statute of limitations running at once. The basis of this holding apparently is that it rests with the holder of the note to make the note due at once by bringing suit, the institution of suit being treated as a sufficient demand. It may well be held that the cause of action accrues to a plaintiff when he, at the earliest time when he may, of his own volition, institute proceedings, as was said in Palmer v. Palmer, 36 Mich. 487. It is an apparent anomaly in the law to treat the institution of suit as a sufficient demand, but the doctrine has become too firmly fixed to be now questioned. They say that there are no cases, however, which they have been able to find except such as depend upon statute in Ohio and Arkansas, which hold that interest begins to run upon a demand note prior either to an actual demand before suit, or the institution of suit, which is treated as a sufficient demand.

CONSTITUTIONAL LAW — ORGANIZATION OF LEGISLATURE—HOUSE OF REPRESENTATIVES—ELECTION OF MEMBERS.—The conflict in the organization of the Kansas legislature, which has been fully ventilated in the daily press, came to a climax in the decision by the supreme court of that State, in the *habeas corpus* case of L. C. Gunn, involving the question as to which of the two organizations was the legal house of representatives. The following are some of the points of law laid down in the opinion:

1. When a number of persons come together at the hall of the house of representatives in the State capitol, at a regular session, commencing on the second Tuesday of January of each alternate year, claiming to be members of the house of representatives, those persons who hold certificates of membership from the secretary of State, certified by him under his seal of office, in accordance with the determination of the State board of canvassers, are the only persons entitled to participate in the organization of the house. Such certificates of election confer title upon the holders thereof, governing their associates and everybody who has a lawful duty to determine who are elected representatives, until there can be an adjudication by the house itself to the contrary.

2. Where a majority of the members of the house of representatives in this State, each one of whom holds a certificate of membership, prescribed by the statute, meets at the usual and customary hour in the hall of the house of representatives at the State capitol at the regular time for the commencement of a

session of the legislature, and perfects an organization as a house, appoints its committees and initiates legislation, such body is duly organized and is the constitutional house of representatives, although the governor, or senate, or both, refuse to communicate with or recognize it as the house of representatives. Such a house of representatives, so constituted, and organized, may keep and publish a journal of its proceedings, and such journal, when properly kept and published, imports absolute verity. Such a house also has the power, under the constitution and laws, to imprison for contempt contumacious witnesses in proper proceedings pending before it.

3. The constitutional house of representatives of the State regularly organized, having a quorum and transacting business in the hall of the house of representatives at the capitol, provided for its sessions, cannot be ousted or destroyed as a house by the refusal or neglect of the governor, or of the State senate, or of both, to communicate with it.

4. If an office is filled and the duties pertaining thereto are performed by the officer, or a body *de jure*, another person or body, although claiming the office under color of title, cannot become an officer, or body *de facto*, and an officer or body claiming to be such *de facto*, cannot oust or destroy the power of an officer, or body *de jure* by taking partial possession of the room or office, where the officer or body *de jure* is in possession and transacting business.

5. Where the constitutional house of representatives of the State convenes at the time and place provided by law, perfects its organization, appoints its committees and initiates legislation and continues to transact business, its power is not usurped or destroyed as the house of representatives by the organization in the same room of another pretended house of representatives composed of 58 members having certificates of election, but being less than a constitutional quorum, although such body is recognized by the governor of the State and by the State senate as a house, or as a *de facto* house of representatives. Nor can such pretended body forbid or prevent the constitutional house of representatives from exercising its power, under the constitution and laws, to imprison for contempt.

6. The house of representatives is not the final judge of its own powers and privileges in cases in which the rights and liberties of the subject are concerned; but the legality of its action may be examined and determined by this court. That house is not the legislature, but only a part of it, and is therefore subject in its action to the laws, in common with all other bodies, officers and tribunals within this State. Especially is it competent and proper for this court to consider whether its proceedings are in conformity with the constitution and laws, because, living under a written constitution, no branch or department of the government is supreme; and it is the province and duty of the judicial department to determine, in cases regularly brought before them, whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity with the constitution; and if they have not been to treat their acts as null and void.

SUIT IN EQUITY TO RESTRAIN ACTION OF MUNICIPAL CORPORATIONS IN SEEKING TO AID A PRIVATE CONCERN BY AN ISSUE OF ITS BONDS OR AN APPROPRIATION OF ITS FUNDS.

Involved in this discussion is the question of the right of individual tax-payers to maintain a suit in equity to obtain relief, when money or property of the municipality is being diverted, or misappropriated, wasted or squandered. This is a question of no slight importance and one which has been, and is being, much discussed in the courts of this country. It is argued on the one hand, that for such a breach of public trust, on the part of the municipal officers, the remedy to the citizens interested must be found at the polls, where they must make manifest their appreciation of the services of such officers; or they must seek the aid of the courts in the name of the attorney-general where the injury complained of is of a public nature, as distinct from a private injury. On the other hand it is contended that under circumstances which make it inexpedient or impossible for the attorney-general to act, or where he refuses to act, and the injury threatened is imminent, then the individual tax-payer may bring his suit in equity to enjoin such unlawful diversion, or misappropriation. The corporation holds its funds and other property, in trust for its citizens, and any misuser, or misappropriation thereof is an injury to each citizen, as well as the whole body corporate. And the citizen tax-payer has a special and individual interest in having the wrong righted. Otherwise he is irreparably injured, since he must contribute his proportion of taxation to replace, or make good, or pay the funds or property so misappropriated. It is not our purpose here to consider the limitations upon the legislative power to tax or to transmit that power to its creatures, these municipal and *quasi*-municipal corporations, or to discuss the subject of taxation except as it affects the remedy of tax-payers for illegal corporate acts. It is a general rule that the legitimate object of raising money by taxation, is for public purposes, and the proper needs of government, general and local.[1] And "there can be no legitimate tax-

[1] Cooley on Taxation, 2d ed.; Weismer v. Village of Douglas, 64 N. Y. 91; Dillon on Municipal Corporations, 3d ed., Sec. 726.

ation when the money to be raised does not go into the public treasury, or is not destined for the use of the government, or of some of the governmental divisions of the State."[2] A distinction is made, in this discussion, between the mere power of a court of equity to interfere to restrain the collection of taxes affecting only some particular individuals in their rights and the right of tax-payers to prevent the collection of a tax illegally levied and affecting every tax-payer, or when the question is the right of a tax-payer to restrain or prevent illegal corporate acts, whereby municipal property is being unlawfully diverted, misappropriated, wasted or squandered. There can be no doubt, that where the powers conferred upon a municipality or *quasi*-municipality, have been illegally or improperly exercised, and there has been a breach of the trust relation, whereby the burden of taxation will be unjustly increased, the tax-payer has the right to a remedy in equity. The chief difference of opinion arises when we are called upon to say who shall be the party complainant in a bill of this character. I now propose to consider the subject with reference to the mode of procedure, or practice. By a great preponderance of authority, the attorney-general, or a State's attorney, has undoubtedly the right in all cases of such illegal exercise of corporate rights, wherever public funds or property is being unlawfully used in such a manner as to affect the tax-payer's burden, to interfere by a bill in equity brought in his name or in the name of the people at the relation of a person or persons interested in all cases where equity has proper cognizance of the subject-matter.[3] And see for further authority the States reports of most of the States. This authority and practice seems to come directly from the English practice. In that country where it is sought by suit in equity to enforce a public trust against a municipal corporation, the attorney-general is the proper party, and an individual, though a member of such corporation, claiming to be entitled by reason of a personal injury cannot maintain such action at his own instance.[4] So here we find the law limits the right to proceed in equity, in these cases, to the public officers of the State, the subject-matter being regarded as that which affects the public at large, as distinct from that which merely affects the private individual. This English practice has been followed by some of the States of America, notably, Michigan and New York previous to the passage of the statute of 1872, ch. 161. There were numerous cases decided in New York previous to the passage of this act of 1872, and also in other States which followed the same English practice, to the effect that a private citizen and tax-payer, cannot, in the absence of such a private interest which is especially distinct from that of the public concerned, maintain a suit in equity, by himself or with others, to prevent any threatened illegal act which might be oppressive in its results to the whole community by creating unjust or excessive taxation, yet the recent cases in this State determine by a great preponderance of authority, that a single tax-payer, or a number of them, may have a remedy in equity upon his or their suit to prevent municipal or *quasi*-municipal corporations or their officers from any unlawful taxation, or from resorting to any unlawful use or appropriation of the funds or property of the citizens of such corporate body. And this relief is granted in many cases upon the ground that such tax-payer would, if the threatened illegal act complained of were carried out, be especially injured as such tax-payer, and such injury would be irreparable.[5] In the case of McCord v. Pike, *supra*, a bill in equity was exhibited in the Superior Court of

[2] Hanson v. Vernon, 27 Iowa, 28; Allen v. Inhabitants of Jay, 60 Me. 124.

[3] Cooley on Taxation, 2d ed. 764; Dillon on Municipal Corporations, Sec. 912; High on Injunctions, 2d vol., 2d ed., p. 857.

[4] Joyce on Injunctions, 1877 ed. 293.

[5] Hills v. Peekskill Savings Bank, 26 Hun, 161; Osterhout v. Highland, 27 Hun, 167, 98 N. Y. 222; Latham v. Richards, 15 *Id.* 129; Metzger v. Attica & Arcade R. R. Co., 79 N. Y. 171. Sec. 1925 of the N. Y. Code now provides that such suit may be maintained. Wright v. Bishop, 88 Ill. 302; Chestnutwood v. Hood, 68 Ill. 132; City of Valparaiso v. Gardner, 97 Ind. 1; Hospes v. Wyatt, 63 Iowa, 264; Rice v. Smith, 9 Iowa, 570; Town of Jacksonport v. Watson, 33 Ark. 704; London v. City of Wilmington, 78 N. C. 109; Smith v. Magourick, 44 Ga. 163; Sinclair v. Comm's Winona Co., 23 Minn. 407. In Wheeler v. Philadelphia, relief was denied but upon other grounds than those affecting the parties to the suit. Wheeler v. Philadelphia, 77 Pa. St. 338; New Orleans, etc. R. R. Co. v. Dunn, 51 Ala. 128. The case of Milliard v. Comstock, is a strong case, holding that the tax payers are the only right parties plaintiff, that the State has no interest in the suit. Milliard v. Comstock, 58 Wis., 565; Curtenius v. Grand Rapids & Ind. R. R. Co., 37 Mich. 583; McCord v. Pike, 121 Ill. 288.

Cook County by Eugene S. Pike, *et al.*, citizens and tax-payers of Cook County in behalf of themselves and all other tax-payers of Cook County against Ira McCord and the Board of County Commissioners of the County of Cook praying that the execution and delivery of a certain deed be enjoined. Answers were filed to the bill, and McCord filed a cross-bill against the board of county commissioners and the complainants, praying that specific performance of a contract to purchase the property, the execution of the deed for which was sought to be enjoined by the original bill, be decreed. Answers were filed to the cross-bill and the usual replications to the answers. On hearing the court decreed that McCord's cross-bill be dismissed, and that the board of county commissioners be perpetually enjoined from executing and delivering the deed described in the original bill. The writ of error is brought by McCord. The court, Scholfield, Justice, giving the opinion say: "The first question to be considered is, will a bill in equity, by tax-payers, lie in a case like the present. The contention of plaintiff in error, is that such a bill will lie only when in the name of the attorney-general, or of the State's attorney of the county, as the representative of the people. In some States, and notably in New York, this is the rule. See Roosevelt v. Draper, 23 N. Y. 318. But the ruling in this State is different. It is here held that where an unjust and illegal burden is being imposed on the tax-payer by the municipality, or the money or property of the municipality, to replace which, taxes must be levied, is being wasted or squandered, the tax-payer has such a direct interest that a bill to enjoin the threatened burden will lie," and citing the following cases of that court.[6] And the court also point out wherein the case of Chicago v. Union Bldg. Ass'n,[7] does not conflict with the rule. This court also held in the case of Town of Aurora v. Chicago, etc. R. R. Co.,[8] that money raised for a special purpose and in the hands of the municipal authorities, is a trust fund and cannot be appropriated for any other purposes than those intended. It was also held by this same court in an earlier case[9] that corporate property is held in trust for the benefit of its citizens and tax-payers, and the corporation is bound to administer such property, faithfully, honestly and justly, and if it is guilty of a breach of trust by disposing of its valuable property without any, or a nominal consideration, its act would be regarded in the same light as if it were a private individual, and the same relief would be granted against it. But in the case of Roosevelt v. Draper, above referred to, Justice Harris interprets this relation of tax-payer and municipality differently. He says the tax-payer has no interest legal or beneficial in the funds or property of the municipality that "the relation of *cestui que trust* or trustee does not exist between him and the corporation." In the case of Curtenius v. Grand Rapids & Indiana R. R. Co., *supra*, the court, it seems to me, depart from the rule laid down in its first formal disposition of this question, in the case of Miller v. Grandy, where the court held that a resident tax-payer owning real and personal property subject to taxation who files his bill of complaint "in behalf of himself and all residents and tax-payers" of his town, against the members of the town board to restrain them from allowing some claims of individuals for money advanced for bounty and enlistment purposes, and to restrain the clerk from issuing orders on said accounts, and the supervisors from inserting any amount so allowed on the assessment roll, cannot maintain his suit because he does not set up any grievance which is not of the same nature with the grievance impending over the whole community. There is not a distinct private wrong to complain of here, so much as a public one. It affects alike every tax-payer. It would be different if a present injury had been inflicted. That is if the tax had been assessed against the property. There the private individual has sustained an injury. The injury is capable of being separated from that of the public. In the case under discussion by the court, Justice Campbell, giving the opinion says: "The interest of men in good government are joint and not several. The single voter or tax-payer has no voice in public affairs. He

[6] Colton v. Hanchett, 13 Ill. 615; Prettyman v. Supvr's of Tazewell Co., 19 Ill. 406; Perry v. Kinnear, 42 Ill. 160; Drake v. Phillips, 40 Ill. 389; Chestnutwood v. Hood, 68 *Id.* 132; Devine v. County Comr's, 84 Ill. 590; City of Springfield v. Edwards, 84 *Id.* 626; C. & V. R. R. Co. v. People, 92 *Id.* 170; Leitch v. Wentworth, 71 *Id.* 147.

[7] 102 Ill. 379.

[8] 119 Ill. 246.

[9] Sherlock v. Village of Winnetka, 59 Ill. 389.

can only exercise his influence as one of a lawful majority, and then only by his vote. The men whom he aids in electing, or who are elected in spite of him, represent the common will, which is the only will that governs, and grievances which afflict the community must be redressed by those to whom the law has intrusted the duty of interference. There are some evils which cannot be redressed at all, because the discretion of the officers producing them cannot be reviewed, and the people must bear the burden of choosing such servants. But whenever redress is attainable it must be sought for by some other minister than a self-appointed private party in whom the people or their agents have not vested any such supervisory power."

But in the case of Curtenius v. Grand Rapids & Indiana R. R. Co., above cited, the facts were that complainant was a resident tax-payer and owner of considerable real and personal estate and that his share of the proposed tax would amount to more than one hundred dollars, such amount being required to give the court equity jurisdiction. He filed his bill against the township board and the railway company to enjoin the emission of the bonds and coupons proposed in aid of the construction of the railway of the said corporation. No other party was united as complainant and the bill did not profess to be filed on behalf of any one else. A general demurrer was filed which was at length overruled. The township consented to a decree against it, but the railroad company answered and the cause was heard on pleadings and proofs. The company appealed from the decree entered against it.

The case presented in the supreme court involved only one question, whether, assuming the bonds if issued would be invalid, is it competent for complainant, an individual resident, owner of real and personal estate within the township subject to taxation, to maintain his bill to enjoin the issue of these bonds? The court says "the question propounded is one of great practical importance, and unfortunately judicial opinion is radically divided upon it. This difference is tersely and clearly traced and explained in the work of my brother Cooley. Cooley on Taxation, 548. * * * The whole field has been repeatedly gone over and the subject has been held up in every point of view of which it would seem capable. The substance of the views advanced on each side of the question is given in the work just referred to and the numerous cases there cited." The court then proceeds to show the distinction between the present case and Miller v. Grandy, *supra*. In that case, says the court "the complainant assumed to act for all tax-payers and the bill was not framed to arrest unlawful municipal action already in progress and sufficiently advanced to threaten injury to the individual interests of the complainant, but it was aimed to protect against an injury, to proceed if at all from future, unlawful action which might or might not be taken." "In the case before us the town authorities had actually proceeded down to the last step in a cause of unlawful action intended to create a heavy municipal debt, and cause it to be necessary to make large demands on the tax-payers, and nothing remained but the emission of the negotiable evidences of that debt, and the commencement of that act was almost, if not quite entered upon." This reasoning labors hard for a distinction that is not so apparent to the ordinary mind.

The same court in the case of Steffes v. Moran & Phelps,[10] held that an individual tax-payer whose tax is but a few cents cannot maintain a bill to restrain a threatened diversion of public funds by the board of supervisors. "Public wrongs must be redressed by the people's public agents and not by private intervention." The court, however, in this last case united in their opinion that if the amount of tax paid, or which would necessarily be assessed against complainant's property, to meet his share of the tax was large enough to bring the matter within the limit of equity jurisdiction he might then have some chance to redress upon a sufficient case made in a suit of this kind. In the case of Attorney-General v. Detroit,[11] Mr. Justice Cooley reasoning right along the line followed in Miller v. Grandy, *supra*, says "the right of the attorney-general, to proceed in equity to enjoin an abuse of corporate power, consisting in the appropriation of corporate funds in a manner not justified by law, appears to me to rest in sound principle. The municipality and its citizens are not alone concerned in

[10] 68 Mich. 291.
[11] 26 Mich. 263.

such an abuse; the corporate powers have been conferred by the State, with such restrictions and limitations as were thought important, some of which were imposed for the protection of the corporators against unjust and oppressive action of officials, and others from considerations of general public policy. It can never be admitted that because the corporation and its members in general, or even all of them, consent to or connive at the setting aside of these restrictions and limitations, the State which deemed them important, shall not be at liberty to complain, for this would be to annihilate the just and necessary supremacy of the State. * * * It is the right of the State at all times to keep the grantees of its franchises within the limits prescribed in the grant, and public policy in general requires that serious departures shall not be overlooked." An information in equity at the attorney-general's instance must be based on a public grievance.[12] The Supreme Court of Iowa, in a recent case decided a bill for injunction rather than *certiorari* is the proper proceeding to arrest an unlawful attempt by a city to dispose of its property to the injury of its tax-payers. But the remedy is by *quo warranto* when the corporate body sought to be enjoined has no legal existence;[14] and when directors of a school district are about to make an unlawful and unauthorized disposition of the public school fund, injunction is the only remedy of an individual tax-payer.[15] The issue of bonds by a city in aid of a railroad company it seems will be enjoined by suit in equity where the whole question has not been submitted to a vote of the electors of said city and when the question of the payment of the principal at a definite time has not been submitted to the vote of such electors,[16] under ch. 45, Revised Laws of Nebraska, one or more citizens and tax-payers suing for themselves and others may maintain a suit in equity to restrain the making or carrying out of contracts which will bind a county beyond the constitutional limit.[17]

California seems to follow in the general practice as to these suits in equity by individual tax-payers.[18] There should be no laches on the part of complainants seeking equity relief under this practice, otherwise the rights of third parties may come into question and thus materially affect the right to maintain such suit for relief.

PERCY EDWARDS.

Owosso, Mich.

[12] Attorney-General v. Evart Booming Co., 34 Mich. 462.
[13] Brockman v. City of Custor, 44 N. W. Rep. 822.
[14] McDonald v. Rohrer, 22 Fla. 198.
[15] Black v. Ross., 37 Mo. App. 250.
[16] Cook v. Beatrice, 48 N. W. Rep. 828.
[17] Wood County Ct. v. Boreman, 34 W. Va. 362.
[18] Wim v. Shaw, 87 Cal. 631, overruling a former case. See, also, Barry v. Goad, 89 Cal. 215.

NEGLIGENCE — INJURY TO EMPLOYEE — EVIDENCE OF EXPERIMENTS.

CHICAGO, ST. L. & P. R. CO. V. CHAMPION.

Supreme Court of Indiana, December 23, 1892.

1. Where the issue is as to whether or not a car, while being pushed, at about four miles an hour, with brakes set, down a slight grade, to be coupled with another car, did jump forward, at the release of the brakes, when within six or eight inches of the car with which it was to be coupled, it is error to exclude the result of an experiment made at the same place, and under exactly similar conditions. McBride, J., dissenting.

2. Where the evidence is in conflict as to whether or not a car, while being pushed, at about four miles an hour, with the brakes set, down a slight grade, to be coupled to another car, would jump forward, at the release of the brakes, when within six or eight inches of the car with which it was to be coupled, a verdict of a jury will not be disturbed on appeal on the ground that the court should have taken judicial knowledge that a car, under such circumstances, could not jump forward.

MILLER, C. J.: The complaint charges that the appellee was an employee of the appellant, and that on the 24th day of January, 1888, while in the discharge of his duties as such employee, in making a coupling between two cars in appellant's yard, he had his hand crushed. The right of recovery for this injury is based upon the alleged negligence of the appellant in employing and keeping in its employ, as a fellow-servant with the appellee, one Theodore Leonard, a yard brakeman, who, it is alleged, was inexperienced, incompetent, unskillful, and negligent, and that the appellant, at the time of his employment and during the time he was in the service of appellant, had knowledge of such incompetence; that, while appellee was performing his work in appellant's yard, appellee undertook to couple a car which Leonard was riding down upon a siding to a car which was standing upon the siding; and that when he was in the act of making the coupling, and when the moving car was within from six to eight inches of the other car, Leonard negligently loosed the brake on the moving car, which caused it to spring or jump forward, and catch and mash the plaintiff's hand between the draw-bars. The complaint was answered by a general denial.

The questions discussed by counsel in their briefs arise upon the action of the court in overruling the motion for a new trial.

It is earnestly insisted that the verdict of the jury is not sustained by the evidence. Counsel for the appellant, in effect, admit that there was some evidence to sustain every material averment of the complaint, but say, with reference to the evidence of the plaintiff that upon the release of the brakes on the moving car it immediately sprang or jumped forward, that "this is a manifest absurdity." The evidence shows, without dispute, that the car which was "kicked" by the locomotive upon the siding was a loaded gondola coal car, weighing from sixty to sixty-five thousand pounds, and moving, with the brakes set, at a rate of three or four miles an hour. The grade upon which the car was moving was a descending grade of six inches to the hundred feet, without any perceptible break in the grade. At the time the brake was released the cars were from six to eight inches apart. The evidence being in conflict upon the question of whether or not a car would or could, under these circumstances, spring or jump forward, we could not disturb the judgment rendered upon the verdict of the jury unless we could know judicially that it stated that which was physically an impossibility. The natural laws of which courts take judicial notice are such as are of uniform occurrence, and invariable in their action. 12 Amer. & Eng. Enc. Law, 196. Knowledge of facts is usually taken by courts for the purpose of dispensing with formal proof in matters collateral to the point in issue, and seldom, if ever, for the purpose of contradicting and controlling the effect of evidence given upon the trial of a cause. A matter which could legitimately be the subject of inquiry in a court could not well be said to be so well established, and to have acquired such notoriety, as to come within the judicial knowledge of the court. This power of judicial notice is to be exercised with caution. "Every reasonable doubt upon the subject should be resolved promptly in the negative." Brown v. Piper, 91 U. S. 37. We might, and ordinarily would, take notice that a car moving upon a smooth and level track, propelled only by a previously acquired momentum, would not, upon the sudden removal of the friction caused by brakes, accelerate its motion; but, as against evidence introduced to the contrary, we should presume that some undisclosed and exceptional cause had intervened to prevent the application of the general rule. Also, while we might judicially know that the tendency of an inclined grade would be to accelerate the motion of a car moving down the incline, yet we must also know that the law of friction operates against the acceleration of its motion, and that at some degree of inclination the friction would equal and neutralize the motion caused by the descending grade. To determine the effect of these causes upon the motion of a car in a given case, is not a matter of which a court can take judicial knowledge, but must be determined by the jury from the evidence introduced on the trial. We cannot, in this case, as a matter of judicial knowledge, determine that the evidence introduced upon the trial that in this particular instance the car did spring or jump forward was not true.

During the trial the appellant placed a witness upon the stand, and proposed to show that shortly before the trial a test was made upon the siding on which the accident took place, and at about the same place on the siding, by letting a gondola car of the same kind as the one in use at the time of the injury down upon the siding; that Mr. Leonard, the same brakemen who was on the car at the time of the accident, was on the car, which was running at the rate of about three miles an hour, with the brakes set, and that, when within eight or ten or twelve inches of the car to which it was to be coupled, the brake was let off by Mr. Leonard; that the experiment was made on a cold day, and the car was kicked back by an engine from about the same place where it was kicked at the time of the accident; that when the brake was so let off the car did not show an increase of speed. The court excluded this evidence, and this ruling was assigned as a cause for a new trial. In Railroad Co. v. Mugg, 31 N. E. Rep. 564, we held that an experiment made by a witness would not be admissible unless it was shown to have been made under essentially the same conditions that existed in the case on trial. In that case, evidence that a boot froze to a rail was excluded because it did not appear that the conditions of the two boots were the same, as to warmth and moisture. In Smith v. State, 2 Ohio St. 511, the prosecuting witness testified as to the identity of the defendant. The witness was in a room in which a candle was burning, and looking through a window, outside of which he testified to having seen the defendant. Evidence of experiments made at the same window were introduced in support of his testimony. The defendant offered to show that experiments at other windows had been made, in looking from a room in which a candle was burning, through a window, at a person on the outside, under circumstances as near as possible to those narrated by the witness for the State. The court excluded the evidence, and on appeal the judgment of conviction was reversed. The court held that the evidence should have been received, and gone to the jury, for what it was worth, notwithstanding that the experiment was made at a different window. In many other cases, evidence of experiments have been received in evidence,—usually, however, in connection with the testimony of experts. Of this class, we cite Eidt v. Cutler, 127 Mass. 522; Com. v. Piper, 120 Mass. 185; Lincoln v. Copper Manuf'g Co., 9 Allen, 181; Sullivan v. Com., 93 Pa. St. 285. Evidence of this kind should be received with caution, and only be admitted where it is obvious to the court, from the nature of the experiments, that the jury will be enlight-

ened, rather than confused. In many instances, a slight change in the conditions under which the experiment is made will so distort the result as to wholly destroy its value as evidence, and make it harmful, rather than helpful. In other cases, a principle may be established, by experiments made under circumstances quite different from the one under investigation, that will have an important and beneficial bearing upon the investigation. In the offer to prove in this case, many circumstances were included that were wholly unimportant, such as the fact that the same brakeman was on the car, and handled the brakes, in both instances. The important fact sought to be established by the experiment was whether or not a car moving at a slow rate of speed down a slight incline, with the brakes set, would, when the brakes were suddenly loosed, jump or spring forward. If it would do so in one instance, it would, under ordinary conditions, repeat it every time the experiment was tried; for it would be the result of the operation of the laws of motion. The rate at which the car was moving, the suddenness with which the brakes were loosened, the degree of the inclination of the track, might affect the celerity of the movement, but would not affect the nature of the movement. If the question for investigation was the distance which it would jump, or the celerity of the movement, all these things might be important; but in determining whether it would or would not jump they are comparatively unimportant. In our opinion, the circumstances under which the experiment was made were sufficiently similar to the facts surrounding the happening of the accident to make it admissible in evidence, for what it was worth, and for this error the judgment must be reversed.

Some other questions are discussed in the briefs of counsel, but we are satisfied that they are not such as are likely to arise upon a second trial of the cause, and we will not extend this opinion for their consideration.

Judgment reversed, with costs.

NOTE.—Practical tests and experiments may be a very effective kind of evidence, especially when made in the presence of the jury; for, as Tennyson says, "things seen are mightier than things heard." But it is evident that there is great danger of abuse, and such experiments, or evidence thereof, should be carefully guarded and allowed only under proper limitations and restrictions.

Experiments may be such as are made in the court room either by the jurors themselves or by some one else in their presence, or they may be such as are made outside of court Of the first class, those made in court, Judge Thompson says that they should generally be discountenanced, owing to the liability which exists of the jury being imposed upon by skillful manipulation or jugglery, but that when they come within the range of ordinary knowledge or experience they may well be permitted. 1 Thomp. Tr. § 620. In the following cases experiments were held to be proper in the presence of the jury: In the case of Farmers' & M. Bank v. Young, 36 Iowa, 45, the question arose as to the effect of the use of a blotting pad in making the same ink look of a different color in a writing from that where no blotter was used, and the supreme court, upon appeal, held that it was error to refuse to permit the witness to illustrate the effect of the blotting pad by trying the experiment in the presence of the jury. In the case of State v. Linkhaur, 69 N. Car. 214, 12 Am. Rep. 645, the defendant was indicted for disturbing a religious meeting by his singing, and a witness was permitted to give an imitation thereof. In the case of Osborne v. Detroit, 32 Fed. Rep. 36, which was an action to recover for personal injuries, the plaintiff claimed to have been paralyzed by the accident, and this was demonstrated by sticking a pin into the paralyzed portions of her body and thus showing to the jury the loss of feeling. In Nat. Cash Register Co. v. Blumenthal, 85 Mich. 464, which was an action for the price of a cash register, the defense being that it failed to register properly, the agent of the plaintiff was permitted to operate the machine in the presence of the jury, after evidence had been introduced showing that the machine was in the same condition as when it had been returned by the defendant for failing to work properly. So, an expert may be permitted to make illustrations upon a blackboard for the purpose of explaining his testimony to the jury. McKay v. Lasher, 121 N. Y. 477; Dryer v. Brown, 52 Hun, 321. And physical injuries, clothes, weapons, and the like may be exhibited to the jury in proper cases. State v. Wiemers, 66 Mo. 13; Evarts v. Middlebury, 53 Vt. 626; Hart v. State, 15 Tex. Ct. App. 202, 49 Am. Rep. 188; Wynne v. State, 56 Ga. 113; McDouel v. State, 90 Ind. 320; Story v. State, 99 Ind. 413; Com. v. Brown, 121 Mass. 69; People v. Gonzales, 35 N. Y. 49; Indiana Car Co. v. Parker, 100 Ind. 181; Mulhado v. Brooklyn City R. R. Co., 30 N. Y. 370. In the recent case of Leonard v. Southern Pac. Co., 15 L. R. A. 221, where the question arose as to whether or not a scar upon the bottom flange of a rail was made by a locomotive wheel as the rail lay across the track, the defendant having introduced the scarred rail in court, it was held proper for the plaintiff to introduce a similar section of rail and wheel, and to show to the jury that the wheel could not strike the lower flange of the rail as claimed by the defendant. The court said: "Experiments, to be admissible, must be based on conditions similar to those existing in the case on trial. . . . In all cases of this sort very much must necessarily be left to the discretion of the trial court, but when it appears that the experiment or demonstration has been made under conditions similar to those existing in the case in issue, its discretion ought not to be interfered with."

On the other hand, where an accused claimed that by an unknown power he was able to answer sealed letters addressed to spirit friends, the court refused to permit him to give an exhibition of such power in open court. U. S. v. Ried, 42 Fed. Rep. 134. A fuller statement of this case will be found in 31 Cent. L. 304, where the editor seems to incline to the opinion that it would probably have been wise for the court, in its discretion, to have permitted the exhibition. Experiments by the jurors themselves have generally been condemned as improper. State v. Sanders, 68 Mo. 204; Jim v. State, 4 Humph. (Tenn.) 290; Yates v. People, 38 Ill. 531; Underhill v. Waite, 9 N. Y. Weekly Dig. 438. But see 2 Thomp. Tr. § 2604.

In Hatfield v. St. Paul, etc. R. R. Co., 33 Minn. 130, 22 N. W. Rep. 176, the court stated that there was "no doubt of the power of the court, ina proper case, to require a party to perform a physical act before the jury that would illustrate or demonstrate the extent and character of his injuries," but it was held that

refusal of the trial court to order the plaintiff, who claimed to have been rendered lame on account of personal injuries alleged to have been caused by the negligence of the defendant, to walk across the room was not cause for reversal, especially as there was abundant uncontradicted evidence of her lameness. So in the case of Smith v. St. Paul City R. R. Co., 32 Minn. 1, it was held that the trial court did not err in refusing to permit the jury to proceed to the car house of the defendant and there witness experiments. To the same effect is Kinney v. Folkerts, 84 Mich. 616. But in Stockwell v. Ry. Co., 43 Iowa, 470, the supreme court held that such a proceeding was not prejudicial error in that case. See, also, Dillard v. State, 58 Miss. 368. Evidence of experiments made by a witness outside of court has been admitted in many cases under limitations and conditions similar to those stated in the principal case, although that case, upon the facts, is very close to the line. The cases in which such evidence has been admitted have usually been those in which it was proper in connection with the testimony of experts. Thus, in the case of Sullivan v. Com., 93 Pa. St. 285, a physician was permitted to show the effect of powder marks made by firing at short range, where he had made the experiment upon stuff similar to the gown worn by the deceased, with the same pistol loaded with cartridges out of the same box, as that with which she had been shot. So, in the case of Eidt v. Cutler, 127 Mass. 522, which was an action for injury to the plaintiff's house, experts were called upon to testify as to whether the injury was caused by fumes and gases from the defendant's copperas works or by emanations from a sewer near by, and the plaintiff's experts were permitted to detail experiments made by them under conditions and circumstances as nearly as possible like those surrounding the plaintiff's house in the absence of the sewer. See, also, note to Hart v. State, 49 Am. Rep. 191, 193. Other cases of this class are cited in the principal case and need not be repeated here, but the following additional authorities are to the same effect. Boyd v. State, 14 Lea (Tenn.), 161; Williams v. Taunton, 125 Mass. 34. Such evidence has also been admitted even where the witnesses were not, strictly speaking, experts. Thus, in Brooke v. Chicago, etc. R. R. Co., 81 Iowa, 504, it was held that evidence as to experiments made by a witness in placing his foot between the rails to show where it would be caught was admissible when the witness who made the experiment and the shoe worn by the injured person were before the jury. Another illustration is found in the case of Smith v. State, 2 Ohio St. 511, the facts of which are stated in the principal opinion. But in order to render such evidence admissible in any case the conditions and circumstances of the experiment must be at least substantially the same as those of the case on trial, and the evidence must be such as is calculated to enlighten, and not to confuse the jury. Lake Erie, etc. R. R. Co. v. Mugg (Ind.), 31 N. E. Rep. 564; Com. v. Piper, 120 Mass. 188; Hawks v. Charlemont, 110 Mass. 110, 113; Com. v. Twitchell, 1 Brewst. (Pa.) 556. In the last case just cited, the question being as to the ease with which a human skull could be broken with a poker, evidence of the experiments by a witness upon another skull with a poker like that with which the skull of the deceased had been broken was rejected. So in State v. Justus, 11 Oreg. 170, 185, 50 Am. Rep. 470, the question being as to the appearance and characteristics of close gunshot wounds upon the human body, evidence of experiments made by non-professional witnesses upon pasteboard targets was held inadmissible. And in the case of Ulrich v. People, 39 Mich. 245, which was a prosecution for rape alleged to have been committed in a wheat field, the woman having testified that the defendant had dragged her over a fence, the court very properly excluded evidence of experiments made in attempting to lift other women over the same fence.

W. F. ELLIOTT.

CORRESPONDENCE.

To the Editor of the Central Law Journal:

OBTAINING WRITTEN EVIDENCE FOR USE IN COURT.

The question put by Mr. Evans in 36 Cent. L. J. 218, suggests a proposition of some importance, especially to the young practitioner, because of the frequency with which it may arise in his practice, if not because of any intrinsic difficulty in the law upon the subject. Of course, there is no question about the rule which "denies the admission of all evidence secondary in its nature, until it is first shown to the satisfaction of the court that the primary evidence is unattainable by the parties." Provision Co. v. Cannon, 31 Fed. Rep. 313. The absence of a private paper from the State of the tribunal in which it is desired to prove the contents of such paper, does not change the rule requiring the best evidence. But the paper is out of the jurisdiction of the court. It has no power to enforce its presence. Hence, secondary evidence may be given of its contents. Whether this may be done without first showing an effort to procure the attendance of the person having possession of the paper, or without proving its contents by a commission, the authorities are neither clear nor uniform. In the following cases it was held that proof that the paper was in the hands of a third person over whom the party had no control, in another State, was sufficient to authorize the admission of the secondary evidence: Memphis v. Hembree, 4 South. Rep. 392; Holthausen v. Pondir, 18 N. Y. 361; Shepherd v. Giddings, 22 Conn. 282; Brown v. Wood, 19 Mo. 475; Boone v. Dyke, 3 Mon. (Ky.) 532; Whilden v. Bank, 64 Ala. 1, 38 Am. Rep. 1. But the balance of authority is the other way, that there should be proof of effort to procure the attendance of the person with the original paper, or a commission issue: Townsend v. Atwater, 5 Day, 298; Lewis v. Beatty, 8 Mart. (La.) N. S. 288; Forrest v. Forrest, 6 Duer, 103; De Baril v. Pardo, 8 Atl. Rep. 876; Muflamphy v. Scott (Ill.), 26 N. E. Rep. 640; Wiseman v. R. R. Co., 26 Pac. Rep. 272; Bowick v. Miller, 26 Pac. Rep. 861; McGregor v. Montgomery, 4 Pa. St. 237; Dickinson v. Breeden, 25 Ill. 186. In Bailey v. Johnson, 9 Cow. (N. Y.) 115, such a paper was proved by commission, and a copy annexed and returned. See, also, Burton v. Driggs, 20 Wall. (U. S.) 133. The Kansas rule may be found stated in Stratton v. Hawks, 43 Kan. 538, but under the statute. The cases before cited from the Pacific Reporter were decided in Oregon, and were upon its statute. The question is one of interest, and in the absence of a controlling decision in one's own State it is safer to show diligence in trying to obtain the primary evidence, though out of the State.

D. L. A.

Sherburne, N. Y.

To the Editor of the Central Law Journal.

Noticing the query of Clinton J. Evans in your issue of March 17th, p. 218, and being afflicted that way

myself, I have had the witness in control of the books or documents read the contents thereof and have the same taken down in the deposition by the officer taking it. Sometimes I have varied this proceeding by having the witness produce a copy compared by him with the original and have it attached to the deposition. It has been my fortune to never have the practice questioned, but if it is wrong I should like to know it.

HOMER KENNETT.

Concordia, Kan.

To the Editor of the Central Law Journal.

In re query, Clinton J. Evans, No. 11, current volume, what's the matter with Dietz v. Requier, 27 Kan. 94?

W. F. GUTHRIE.

Atchison, Kan.

BOOK REVIEWS.

BISHOP ON CRIMINAL LAW.

The title page tell us that these two volumes are "new commentaries on the criminal law, upon a new system of legal exposition," though as a matter of fact it is the 8th edition, the author claims it is "a new work based on former editions." Each volume is complete in itself, the first being general and elementary, the second, treating of the specific offenses. The work has long enjoyed the reputation of being the most complete and reliable treatise upon criminal law published in this country. The author is too well known to require any introduction at our hands. Whatever Mr. Bishop does, in the line of literary legal work he does well, accurately and thoroughly, and the present volumes form no exception to this. Those who have an interest in the department of criminal law and practice will find these volumes invaluable. They embody the entire substantive law pertaining to criminal offenses, concisely and accurately stated, and with an exhaustive citation of the authorities. The mechanical preparation of the volumes is first class in every respect. The publisher is T. H. Flood & Company, Chicago.

AMERICAN CORPORATION LEGAL MANUAL.

This book of some seven hundred pages is a compilation of the essential features of the statutory law of the various States, regulating the formation, management and dissolution of general business and insurance corporations in America (North, Central and South) with brief summaries as to England, Germany, The Netherlands, France, Italy and Russia. It also contains a synopsis of the patent, trade-mark, and copyright laws of the world. It is intended for the use of attorneys, officers of corporations, investors and business men. To such the book will undoubtedly be of good practical value, being a handy conpendium of corporation statute law, so arranged as to be of easy and ready reference. Published by Honeyman & Co., Plainfield, N. J.

HUMORS OF THE LAW.

"Well, if that ain't mean!" exclaimed the prisoner. "Every durned one o' the stories in this here paper they've gimme to read is continued! An' me to be hung next week!"

"Well," said the man who handed his last cent to the lawyer, "I suppose turnabout is fair play. I broke the law and the law broke me."

"Young man," said the judge sternly, "your face is familiar. Have you ever been in this court before?"

"No, sir," replied the young man; "I'm a faro dealer."

"I have heard of the courage of a man's convictions," said the prisoner at the bar, "but it seems to me that the more times I get convicted the less courage I has."

Visitor (at Cherry Hill)—"I'm very agreeably surprised in the appearance of the prisoners."

Keeper—"Well, sir, you see they was mostly sent here by good judges."

Jim—"Honesty is the best policy arter all."

Bill—"How?"

"Remember that dog I stole?"

"Yep."

"Well, I tried two hull days to sell 'im, an' no one offered more'n a dollar. So I went, like an honest man, an' guv him to th' ole lady what owned 'im, an' she guv me $5."

HIS GROUNDS OF REFUSAL.—The colored man had been taken in the midst of the chicken yard at dead of night, and the next morning he appeared before the throne of justice.

"Will you explain," said the judge, "why you were in that chicken yard last night?"

" 'Case, jedge, de nighttime am de bes' time."

"None of that, please. Will you explain why you were there?"

The colored man drew himself up with dignity.

"No, sah, I won't," he said. "Dat's what dish yer co't am fer, yo' honah."

HOW LINCOLN EDUCATED HIMSELF.—"Did you not have a law education?"

"Oh, yes! I 'read law,' as the phrase is; that is, I became a lawyer's clerk in Springfield, and copied tedious documents, and picked up what I could of law in the intervals of other work. But your question reminds me of a bit of education I had which I am bound in honesty to mention. In the course of my law reading I constantly came upon the word 'demonstrate.' I thought at first that I understood its meaning, but soon became satisfied I did not. I said to myself, 'What do I do when I demonstrate more than when I reason or prove? How does demonstration differ from any other proof?' I consulted Webster's Dictionary. That told of 'certain proof,' beyond the possibility of a doubt; but I could form no idea of what sort of proof that was. I thought a great many things were proved beyond the possibility of a doubt without recourse to any such extraordinary process of reasoning, as I understood 'demonstration' to be. I consulted all the dictionaries and books of reference I could find, but with no better results. You might as well have defined 'blue' to a blind man. At last I said, 'Lincoln, you can never make a lawyer if you do not understand what demonstrate means;' I left my situation in Springfield, went home to my father's house, and stayed there until I could give any proposition in the six books of 'Euclid' at sight, I then found out what 'demonstrate' means, and went back to my law studies."

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

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1. ACCIDENT INSURANCE—Increased Hazard.—It is competent for a life and accident policy to provide that, if the insured shall be injured in any occupation rated by the company as more hazardous than that given by the insured, his insurance shall only be as much as the premium paid will purchase at the rate fixed in the company's tables for such increased hazard; and, if the policy does not name the increased hazard, it is for the jury to determine whether a change in the risk has taken place, and the degree the risk has been increased.—STANDARD LIFE & ACC. INS. CO. v. MARTIN, Ind., 33 N. E. Rep. 105.

2. ACTION — Dismissal — Equitable Plaintiff.—Where an action is dismissed by a legal plaintiff, and an equitable plaintiff makes a motion to reinstate it, such motion is an application to the discretion of the court; and its refusal is no ground of error, even if the equitable plaintiff is prevented from bringing another action by reason of lapse of time.—ANDREWS v. CENTRAL NAT. BANK OF BALTIMORE, Md., 25 Atl. Rep. 915.

3. ACTION — Revival.—Under Rev. St. §§ 2800, 2803, providing that in case of the death of a party to an action, if the cause of action survives, the court, on motion, at any time thereafter, on a supplemental complaint, "may" allow or compel the action to be continued against his personal representatives, leave to continue being thus discretionary with the court, the overruling of an application to continue an action against the administratrix of deceased defendant was proper, when it appeared that the action sought to be revived was instituted 18 years prior to the application to continue; that the documents on which deceased defendant relied for a defense had been destroyed; that deceased defendant was a material witness; and that plaintiff's neglect to earlier prosecute his claim was not sufficiently explained.—CAVANAUGH v. SCOTT, Wis., 54 N. W. Rep. 328.

4. ACTION TO RECOVER REAL PROPERTY.—"An action for the recovery of real property," which has taken the place under the Code of the action of "trespass to try title," cannot be maintained unless there has been an actual trespass by defendant, either in person or through an agent or tenant, and such trespass must be continued down to the time the action is brought.—ANDERSON v. LYNCH, S. Car., 16 S. E. Rep. 773.

5. ADMINISTRATION—Allowance of Claims.—Decedent died at the house of his aunt, where he had made his home, and for his residence there the aunt had been fully paid: Held, that a charge for the use of her house for the funeral should not be allowed.—IN RE MCHUGH'S ESTATE, Penn., 25 Atl. Rep. 875.

6. ADMINISTRATION — Limitation.—The seven-years limitation within which, after a decedent's death, actions must be brought for demands against such decedent, under the Code, §§ 3119, 3483, does not apply to foreclosure of a trust deed given by decedent, since the foreclosure does not take any right, which the decedent had, from the representatives, but leaves them to redeem the same as the decedent might have done.—SMITH v. GOODLETT, Tenn., 21 S. W. Rep. 106.

7. ADMINISTRATION—Sale of Land.—Under Code 1886, § 2105, providing that an intestate's land may be sold by the administrator for the payment of debts where the personal estate is insufficient therefor, and section 2106, providing that the administrator shall make application to the probate court for such sale, an application to sell lands of the estate, alleging that the personalty is insufficient to pay the debts, and that it is necessary to sell the land therefor, is sufficient to give the court jurisdiction; it being unnecessary to allege the amount of the debts or the value of the personalty.—COTTON v. HOLLOWAY, Ala., 12 South. Rep. 172.

8. ADMINISTRATOR WITH WILL ANNEXED.—The office of an administrator with the will annexed ceases when the will is set aside.—KILTON v. ANDERSON, R. I., 25 Atl. Rep. 907.

9. ADMINISTRATOR'S SALE — Collateral Attack.—In trespass to try title defendants claimed through an administrator's sale. The record of the probate proceedings on which administration was granted did not show that there were debts against the estate: Held, this did not create a presumption that there were no debts, and will not sustain a finding that there was no necessity for, and that therefore, the administration was void.—HARRIS v. SHAFER, Tex., 21 S. W. Rep. 110.

10. ADMIRALTY — Seamen.—A seaman who signs articles for a voyage, and fails to render himself on board in due season, is a deserter.—IN RE SUTHERLAND, U. S. D. C. (Oreg.), 53 Fed. Rep. 551.

11. ADMIRALTY JURISDICTION—Navigable Rivers.—The owner of a vessel injured by a collision with an unauthorized obstruction in a navigable water may maintain a suit *in personam* in admiralty to recover damages from the person who placed or maintains such obstruction therein; and a bridge built under the sanction of an act of the legislature, in so far as it fails to comply with the same, is such an unauthorized obstruction, but in such suit it must be alleged and proved that such obstruction was the cause of the collision.—OREGON CITY TRANSP. CO. v. COLUMBIA ST. BRIDGE CO., U. S. D. C. (Oreg.), 53 Fed. Rep. 549.

12. ADOPTION—Inheritance.—A child adopted in ac-

cordance with the Missouri statute acquires a right to inherit from the adoptive parents, upon their intestacy.—FOSBURG v. ROGERS, Mo., 21 S. W. Rep. 82.

13. ALIENS—Descent and Distribution.—The right of a non-resident alien to sell within three years his interest in land of his ancestor is a fee determinable by the failure to sell during that time, and he is therefore entitled to a partition of the land.—SCHULTZE v. SCHULTZE, Ill., 33 N. E. Rep. 201.

14. APPEAL.—In *mandamus* by a newly-organized township to compel the old township to make an equitable division of the assets and liabilities as they existed before plaintiff's incorporation, defendant cannot, on appeal, be heard to insist on objections to the validity of plaintiff's incorporation, not put in issue by the pleadings, or urged by it in the court below.—INDEPENDENT DISTRICT OF CORWITH v. DISTRICT TP. OF LU VERNE, Iowa, 54 N. W. Rep. 221.

15. APPEAL—Auditor's Finding.—An auditor's finding of facts, when approved by the court to which his report is made, is entitled, on appeal, to the same consideration as a verdict of a jury, and will not be reversed except for palpable error.—IN RE FORD'S ESTATE, Penn., 25 Atl. Rep. 979.

16. APPEAL—Certificate of Evidence.—A statement in a decree that "the evidence was all reduced to writing by the shorthand reporter taking same in shorthand, which was ordered filed and made a part of the record," is sufficient, under Code, § 2742, as a certification of the evidence, although it does not refer to the report as then on file.—BURNETT v. LOUGHRIDGE, Iowa, 54 N. W. Rep. 238.

17. APPEAL—Damages.—Where a judgment for the plaintiff in an action tried by the court without a jury has been affirmed by the appellate court, and no written propositions of law were presented to the trial court, the supreme court will not consider the question whether the damages are excessive, since that is a question of fact, upon which the decision of the appellate court is final.—HALL v. COX, Ill., 33 N. E. Rep. 33.

18. APPEAL—Findings by Court.—Act Jan. 5, 1889, § 4, providing that in cases where a jury has been waived, and the cause tried by the court, the supreme court "shall review said cause in the same manner, and to the same extent, as if it had been tried by a jury," does not intend that the supreme court shall decide on the weight of the evidence given, but on the sufficiency of the facts found to support the conclusions of law.—LYNCH v. GRAYSON, N. Mex., 32 Pac. Rep. 149.

19. ASSIGNMENT FOR BENEFIT OF CREDITORS.—A general assignment by an insolvent debtor for the benefit of his creditors, being within the policy of the law, must be construed and controlled by the same rules as apply in cases of ordinary contracts and conveyances, including the presumption of good faith.—LANDAUER v. CONKLIN, S. Dak., 54 N. W. Rep. 322.

20. ASSIGNMENT FOR BENEFIT OF CREDITORS.—A trustee for the benefit of creditors need not join the creditors mentioned in the deed of trust as beneficiaries in an action at law brought by him for the conversion of the assigned stock of goods by other creditors, who caused the goods to be taken from the trustee's possession, and sold under attachments issued by them.—SANGER v. HENDERSON, Tex., 21 S. W. Rep. 114.

21. ATTACHMENT—Bond.—A bond given by virtue of Rev. St. 1891, ch. 11, § 15, which allows a defendant to obtain the release of attached property upon giving bond with surety, was conditioned for the payment "of whatever judgment may be entered against said defendant." The defendant died pending suit, and final judgment was entered therein against his administrator: Held, that the neglect to pay such judgment was a breach of the bond, for which the surety was liable, since, the bond being statutory, a judgment against the administrator was, within the meaning of the bond, a judgment against the original defendant.—SHARPE v. W. J. MORGAN CO., Ill., 33 N. E. Rep. 22.

22. ATTACHMENT — Evidence.—When an attack is made upon certain proceedings in attachment and the judgment therein rendered, upon the ground of combination, collusion, and fraud between the attaching creditor, the debtor, and the debtor's attorney, in order to give the attaching creditor an illegal preference, and the evidence shows that the latter's rights and propriety are not dependent upon the acts complained of, but should stand and be valid independently of them, the attack must fall.—RAWLINS v. PRATT, La., 12 South. Rep. 197.

23. ATTACHMENT—Exempt Property.—Where a merchant purchases goods of the same class and quality from different parties, and in the ordinary course of business so mingles the goods upon his shelves that it becomes impossible to designate the goods purchased from any one party, yet such fact will not render the entire stock liable to seizure at the suit of one of such parties to recover the purchase price of goods sold to such merchant, notwithstanding section 5137, Comp. Laws, provides that no exemption shall be allowed against an execution issued for the purchase money of property that has been seized under the execution.—WAGNER v. OLSON, N. Dak., 54 N. W. Rep. 286.

24. ATTACHMENT — Intervention.—In attachment, where plaintiff had judgment by default, an intervener alleged that he bought the property before attachment of defendant, and plaintiff replied that the sale was made to defraud creditors of defendant, and prayed "judgment against the intervener, subjecting said property to the payment of their judgment:" Held, that the action is not changed to an equitable action by the prayer, since the legal effect would have been the same as that asked had the answer contained no prayer.—MARKLEY v. KEENEY, Iowa, 54 N. W. Rep. 251.

25. ATTORNEY AND CLIENT — Compensation.—When a firm of attorneys retained in an action resulting in the recovery of a judgment in favor of their client give notice in writing to the judgment debtor that they claim a lien for their services in such action, prior to the service of notice of an application by the judgment debtor to set off the judgment such attorneys acquire the superior right to the money due from such judgment debtor on the judgment so obtained by them, to the amount due them for such services, in preference to the judgment debtor's right of set-off.—HROCH v. AULTMAN & TAYLOR CO., S. Dak., 54 N. W. Rep. 269.

26. BILL OF EXCEPTIONS—Signing.—Under Rev. St. § 629, which requires that a bill of exceptions shall be presented to the judge for signature "within such time as may be allowed," a bill of exceptions presented and signed after the time allowed therefor is not made part of the record by the indorsement thereon of the memorandum of an agreement between the parties to the action that the time for filing the bill should be extended.—RYAN v. STATE, Ind., 33 N. E. Rep. 222.

27. BOND OF INDEMNITY — Construction.—R mortgaged certain land to a loan association. At the same time he executed an indemnifying bond, with sureties, which recited that the loan had been made to R, and was secured by a mortgage on the land; that buildings were being erected thereon; and that liens might attach for work done and material furnished. The bond provided that if R paid for such work and material, and saved the association harmless from all claims, of whatever kind, that might affect its interests as mortgagee, the obligation was to be void. R never owned the land, and an action was commenced on the bond to recover the loan: Held, that the indemnifying bond only protected the association against the liens of mechanics and

material men, and did not cover the failure of title. GUARANTY SAV. & LOAN ASS'N v. RUTAN, Ind., 33 N. E. Rep. 210.

28. BONDS — Action on Coupons. — Where, in an action to recover the value of coupons, the complaint alleges ownership of the coupons, but not of the bonds to which they were attached, an answer setting up, by way of counterclaim, that plaintiff owned the bonds; that the bonds were void; that plaintiff sought to dispose of them to innocent purchasers, —and praying for a cancellation of the bonds, states an equitable cause of action, and a demurrer thereto should not have been sustained.—SCOTT v. TOWN OF MENASHA, Wis., 54 N. W. Rep. 263.

29. CARRIERS — Passengers — Damages.—Where a passenger on a railroad train is wrongfully ejected from a train, mental suffering caused by the humiliation is a proper element of compensatory damages—CURTIS v. SIOUX CITY & H. P. RY. CO., Iowa, 54 N. W. Rep. 339.

30. CARRIERS — Passenger — Failure to pay Fare.— Where the statute allows a railway company to charge 25 cents additional to the regular fare if a passenger neglects to purchase a ticket, when the ticket office is open for half an hour preceding the arrival of a train, a passenger, on his refusal to pay such addition to the regular fare, is liable to immediate ejection from the train, whether or not he knew of such regulation, under Gen. St. § 1517, providing that "whoever does not, upon demand, first pay such toll or fare, shall not be entitled to be transported any distance."—MOORE v. COLUMBIA & G. R. Co., S. Car., 16 S. E. Rep. 781.

31. CARRIERS—Passengers — Negligence. — One who, after boarding a steamer, learns that a certain landing where he intends to stop is off the steamer's route, and that he must pay extra fare in order to stop there, and who declines to do so, but does not change his purpose of taking passage, is a passenger from the time he goes on board, and as such can hold the steamer responsible for negligence whereby he is injured, although he does not prepay his fare or purchase a ticket, it being the custom for the purser to collect fares on board.—THE WASCO, U. S. D. C. (Wash.), 53 Fed. Rep. 546.

32. CARRIERS — Payment of Draft for Goods Sold. — Where a consignee refuses to accept goods because of inferior quality, and also refuses to accept the draft drawn in payment therefor, when presented with a bill of lading and other necessary documents, a party who pays the draft, on whom is was also drawn, "in case of need," acquires a special property in the goods, though the ownership remains in the consignor. — BACHE v. PHILIPS, Pa., 25 Atl. Rep. 891.

33. CARRIERS OF GOODS — Limiting Liability.—A railroad company, in a contract of shipment to a point on a connecting line, may limit its liability for loss or injury to such as occurs on its own line.—GULF, C. & S. F. RY. CO. v. THOMPSON, Tex., 21 S. W. Rep. 186.

34. CARRIERS OF PASSENGERS—Negligence.—Where a railroad company carries passengers for hire on a freight train, it is liable for injuries to them, caused by its negligence, since it is required to exercise the highest degree of care for the safety of its passengers that is consistent with the due use of the train for the purpose of carrying freight. — CHICAGO & A. R. CO. v. ARNOL, Ill., 33 N. E. Rep. 204.

35. CARRIERS OF PASSENGERS — Torts of Servant. — Plaintiff alleged in his complaint that he had purchased a ticket on the premises of defendant, a union railway company controlling a depot where several railroad lines received and discharged passengers, and, while plaintiff was passing from the depot to the train, he was assaulted, at the gate through which he had to pass to take his train, by the "gateman," one of defendant's servants: Held, to state a good cause of action.—INDIANAPOLIS UNION RY. CO. v. COOPER, Ind., 33 N. E. Rep. 219.

36. CERTIORARI — Judgment.—A proceeding before a justice of the peace for the seizure of alleged gambling implements cannot be removed into the circuit court on *certiorari*, where the justice has merely adjudged the property seized to be gambling implements, and continued the case; since such an order is not a final judgment.—GLENNON v. BURTON, Ill., 33 N. E. Rep. 23.

37. CHATTEL MORTGAGE — Possession. — A chattel mortgage contained a clause that in case of default, or on the attempt of the mortgagor to dispose of or remove any of the property mortgaged, or when the mortgagee should choose, it should be lawful for him to take immediate possession of such chattels, wherever found, and to sell them for the satisfaction of his debt: Held that, in the absence of anything showing bad faith, the mortgagee could seize the property whenever he elected to do so, whether or not the debt was due. — RICHARDSON v. COFFMAN, Iowa, 54 N. W. Rep. 356.

38. CONFLICT OF LAWS—Lex Loci Contractus.—Where suit is brought in Mississippi on contracts made in Tennessee, the laws of the latter State must govern in their construction. — WOODSEN v. OWENS, Miss., 12 South. Rep. 207.

39. CONSTITUTIONAL AMENDMENTS.—Const. art. 16, § 1, requiring proposed amendments to the constitution which are to be acted on by the next legislature to be published for three months next preceding the time for electing the legislature, is complied with by printing the same in the statutes, though they are issued 16 to 18 months prior to the election, especially where this has been the uniform mode since the adoption of the constitution. — STATE v. GRACY, Nev., 32 Pac. Rep. 190.

40. CONSTITUTIONAL LAW — Appeal—Criminal Case.— Section 14 of the Illinois fish law of 1885 and 1887, which provides that, in case of acquittal of any defendant who may be arrested for violation of the fish law, the party making the complaint may appeal, is in violation of Const. art. 2, § 10, which provides that "no person shall be twice put in jeopardy for the same offense."—PEOPLE v. MINER, Ill., 33 N. E. Rep. 40.

41. CONSTITUTIONAL LAW—Appellate Court. — Const. art. 7, § 1, provides that the judicial power of the State shall be vested in a supreme and circuit courts, and in such other courts as the general assembly may establish: Held, that though the supreme court possesses the highest and ultimate judicial power under the constitution, and therefore the legislature cannot grant ultimate appellate jurisdiction to other tribunals of an inferior grade, a statute creating another court with appellate jurisdiction, so limited that it cannot equal that of the supreme court, is valid. — BRANSON v. STUDEBAKER, Ind., 33 N. E. Rep. 98.

42. CONSTITUTIONAL LAW—Woman's Suffrage—School Elections.—Act June 19, 1891, entitling women to vote at school elections, is constitutional, as applied to elections of members of boards of education, since they are officers who are not named in the constiution, and concerning the manner of whose election the legislature has therefore discretionary power.—PLUMMER v. YOST, Ill., 33 N. E. Rep. 191.

43. CONTRACTS — Continuing Offer. — On August 23d plaintiffs wrote defendant inquiring at what rate he would discount the paper of one W. On August 26th defendant replied: "I will discount paper after the 15th [of September]; both bills, one a month, without recourse." On the same day plaintiffs answered: "About the 15th [of September] will let you know." No other correspondence occurred between them until September 10th, when plaintiffs wrote defendant of their acceptance of his offer of August 26th: Held, that defendant's offer was continuing, and was still open when plaintiffs accepted it.—SHERLEY v. PEEHL, Wis., 54 N. W. Rep. 267.

44. CONTRACT—Illegality.—A creditor of one who had sold all his property, and fled from the country, agreed with complainant that if he would procure the affidavits and testimony of the debtor, and of two other

witnesses, showing that no consideration was paid for said property, and that the purchaser knew of the debtor's insolvency, he would give complainant a share of whatever he recovered upon a creditors' bill filed by him against the debtor and said purchaser: Held, that the agreement was illegal, as leading to subornation of perjury.—GOODRICH v. TENNEY, Ill., 33 N. E. Rep. 44.

45. CONTRACT — Performance.—Where plaintiffs contracted for the timber on a tract of land, and were to have until a certain date to cut and draw off the same, and they had cut and removed all the timber except a few inaccessible trees, and received the proceeds, they had no right of action for damages against defendant for an alleged violation of the contract by him in directing them, before the time mentioned in the contract had expired, to desist going on the land.—HARKREADER v. EUBANKS, Miss., 12 South. Rep. 210.

46. CONTRACT—Remote and Speculative Damages.—In an action for the breach of a contract to deliver a machine, evidence of the loss of profits in plaintiff's business resulting from the breach, and of plaintiff's expenses in going to a distant city for another machine, is inadmissible; such losses and expenses being too remote and speculative to constitute elements of damages.—GOODELL v. BLUFF CITY LUMBER CO., Ark., 21 S. W. Rep. 104.

47. CONTRACT — Rescission.—Where plaintiff contracted to put in a windmill pump that would supply defendant's stock with water, defendant can rescind, if it proved insufficient for that purpose, though the season was unusually dry.—WERNLI v. COLLINS, Iowa, 54 N. W. Rep. 365.

48. CONTRACT—Rights of Lowest Bidder.—A private person, who has asked for bids from contractors on a house that he intends to construct, is not bound to award the contract to the lowest bidder, but he has a right to inquire into the fitness and skill of the respective bidders to fulfill the contract.—LESKIE v. HASELTINE, Penn., 25 Atl. Rep. 886.

49. CONTRACT TO MAKE WILL.—A letter to plaintiff, in which testator referred to the matter of adopting her, destroying his old will, and making a new one, but without any specific promise, does not constitute an agreement to leave plaintiff any portion of his estate.—IN RE WRIGHT'S ESTATE, Penn., 25 Atl. Rep. 877.

50. CORPORATIONS. — Laws 1889-90, ch. 9, § 1, which gives foreign corporations the same powers as domestic, provided that no foreign corporation "which is hereafter organized" for the purpose of dealing in and buying and selling real estate shall be permitted to transact such business within the State, does not apply to a foreign corporation organized before the passage of the act.—REALTY v. APOLLONIO, Wash., 32 Pac. Rep. 219.

51. CORPORATIONS — Board of Education.—The board of education of the State of Illinois, created by the act of February 18, 1857, for the purpose of maintaining the State Normal University, is a private *eleemosynary* corporation.—BAKEWELL v. BOARD OF EDUCATION, Ill., 33 N. E. Rep. 187.

52. CORPORATIONS — Liability of Stockholder. — The court has no power to entertain motions for orders allowing executions against stockholders of a corporation under paragraph 1192, Gen. St. 1889, until the record of the case in which the motion is made shows that the corporate property has been exhausted.—HOYT v. BUNKER, Kan., 32 Pac. Rep. 126.

53. COVENANT OF WARRANTY—Damages.—Where the title to land conveyed under general covenants of warranty fails, and the purchaser is compelled to acquire the title of the State thereto, the measure of damages, in the absence of fraud or misrepresentation on the part of the grantor, is not the whole purchase price paid, or agreed to be paid, to the grantor, but the amount paid the State in order to perfect the title to such land.—JAMES v. LAMB, Tex., 21 S. W. Rep. 172.

54. COURTS—Common Pleas — Equity Jurisdiction.—The equity jurisdiction of a court of common pleas, in matters of mutual and complicated accounts, is not abrogated by section 5130, Rev. St., which provides that either party may demand a jury trial of "issues of facts arising in actions for the recovery of money only." An action is not one for the recovery of money only, within the purview of the statute, where to administer full and complete relief therein it is necessary to invoke the equity powers of the court to adjust the accounts between the parties, and in such case either party may, by virtue of section 5226 of the Revised Statutes, appeal to the circuit court from the judgment of the court of common pleas.—BLACK v. BOYD, Ohio, 33 N. E. Rep. 207.

55. CRIMINAL EVIDENCE — Obstructing Highway. — Where a person on trial for obstructing a highway pleads a former acquittal of the same offense, and it cannot be determined from the record of the former trial whether the highway in both cases is the same, evidence of the judge before whom the former trial was had is competent to prove such fact.—STATE v. WATERMAN, Iowa, 54 N. W. Rep. 359.

56. CRIMINAL LAW — Assault. — Under Code, § 3876, which declares that, "if any person assault another with intent to commit any felony or crime punishable by imprisonment in the penitentiary where the punishment is not otherwise prescribed, he shall be punished by imprisonment in the penitentiary," etc., assault with intent to commit manslaughter is an indictable felony.—STATE v. MCGUIRE, Iowa, 54 N. W. Rep. 202.

57. CRIMINAL LAW — Insanity as a Defense.—Where insanity is pleaded as a defense, defendant must establish such fact by a preponderance of evidence.—LOVEGROVE v. STATE, Tex., 21 S. W. Rep. 191.

58. CRIMINAL LAW—Names of Grand Jurors.—A motion in arrest of judgment, on the ground that the record does not show the number and names of the persons who served on the grand jury at the time the indictment was found, should not be granted where the minute book of the clerk contains the names of 15 persons returned as grand jurors for the term at which the indictment was found, and the indictment is indorsed by all the names appearing on the minute book.—STATE v. O'BRIEN, R. I., 25 Atl. Rep. 910.

59. CRIMINAL LAW—Sentence.—The applicant, John P. Cox, was indicted for the crime of an assault with intent to murder, and was convicted of an assault with a deadly weapon likely to produce great bodily harm, and sentenced to confinement in the State prison for a term of five years. Section 6732, Rev. St., prescribes the punishment for the crime of which the applicant was convicted to be imprisonment for a term not exceeding two years, or fine of $5,000, or both such fine and imprisonment. The court sentenced the applicant to five years' imprisonment: Held, that the judgment was not authorized by law, and is void.—EX PARTE COX, Idaho, 32 Pac. Rep. 197.

60. CRIMINAL PRACTICE — False Pretenses.—Code, § 3812, provides a penalty for any person who, with intent to defraud his employer, enters into a contract in writing for the performance of any service, and thereby obtains personal property from such employer, and, with like intent, refuses to perform such service: Held, that an indictment drawn under this section, alleging that defendant entered into such a contract, "and" obtained certain property, is fatally defective, in that it fails to allege that the property obtained by defendant was obtained "by reason of" his having entered into such contract.—COPELAND v. STATE, Ala., 12 South. Rep. 181.

61. CRIMINAL TRIAL—Accused as Witness.—It is error, in a criminal case, where defendant, though not the only witness in his own behalf, was still the only one interested, to charge that the jury might consider the interest of any witness, in connection with all the evidence, in determining how far, if at all, they would believe him; and this was in effect to single out and mark defendant for discredit.—TOWNSEND v. STATE, Miss., 12 South. Rep. 209.

62. DEED—Attorney and Client.—Where a deed to an attorney recites that the conveyance is in consideration of the assignment to the grantor by the grantee, as agent, of a certain judgment in favor of his clients, a purchaser from such attorney takes the land charged with notice of a trust.—GOLSON v. FIELDER, Tex., 21 S. W. Rep. 173.

63. DEEDS—Construction.—A grant to a certain person, and his heirs, of the right to build and use a dock on described land within certain lines, "the above right to include all the rights" of the grantor within those lines, together with, all and singular, the hereditaments and appurtenances thereunto belonging, etc., does not convey a fee in the land, but only an easement to use and build the dock.—MUNRO v. MEECH, Mich., 54 N. W. Rep. 290.

64. DEED—Description.—Where there is a discrepancy between the survey of an addition to a town, as shown by the plat, and as the lines were actually run, the purchasers of lots described merely according to their numbers take title according to the lines actually run, when they can be ascertained.—ROOT v. TOWN OF CINCINNATI, Iowa, 54 N. W. Rep. 206.

65. DEED—Reservation — Railroad.—A deed of railroad land "reserving and excepting" a strip 400 feet wide, to be used for a right of way or other railroad purposes, in case the line of said road, or any of its branches, shall be located on or over the same, does not operate as an exception of the strip from the grant, but merely as a reservation of a right of way or easement in the land, and the title to the whole tract vests in the grantee by virtue of the deed.—BILES v. TACOMA, O. & G. H. R. CO., Wash., 32 Pac. Rep. 211.

66. DEED—Trusts—Undue Influence.—Civil Code 1886, § 158, provides that transactions between husband and wife shall be governed by the general rules which control the actions of persons occupying confidential relations with each other. Section 1575 defines undue influence as the use by one in whom a confidence is reposed by another of such confidence to obtain an unfair advantage over him: Held, that a conveyance of land from the husband to the wife, with an oral agreement that it was to be held in trust by her, would be presumed to have been obtained by undue influence whenever the trust should be violated.—HAYNE v. HERMANN, Cal., 32 Pac. Rep. 171.

67. DEED AS MORTGAGE.—Evidence that a creditor took a deed of land in payment of his debt, and acknowledged that the debt was paid, and that afterwards the debtor gave the creditor another conveyance, absolute in form, for the purpose of securing him from loss arising in case the land should turn out to be worth less than the debt, is insufficient to show that the second conveyance was a mortgage, since, at the time it was given, there was no existing debt to be secured by it.—BACHELLER v. BACHELLER, Ill., 33 N. E. Rep. 24.

68. DEED OF MARRIED WOMAN.—In Texas, a conveyance by a married woman of her separate property without the joinder of her husband, in the absence of any concealment, misrepresentation, or other misconduct of either husband or wife, vests no title in her grantee, though the sale was acquiesced in by her husband, and he received the greater part of the purchase money.—FORD v. BALLARD, Tex., 21 S. W. Rep. 146.

69. DEED OF TRUST—Sale.—An instrument conveying lands to secure advances, and authorizing the grantee to take full control of the lands, to sell the same as he may see fit and to do everything with regard thereto as if his own individual property and to make good warranty deeds thereto, accounting for any surplus, gives the grantee full power to maintain an action to set aside an adverse title acquired by a sale under a trust deed.—LERCH v. HILL, Tex., 21 S. W. Rep. 85.

70. DEED OF TRUST—Sheriff's Sale.—In an action to set aside a sheriff's sale under a trust deed, it appeared that the sale occurred about 11 o'clock in the morning. The sheriff testified that he usually made sales "from half past one o'clock to two o'clock in the day," and had never made a sale under a trust deed or an execution as early in the day as this one. There was evidence of a custom to make sales after one o'clock: Held, that the sale took place at an unusual hour, and was not authorized because the sheriff was obliged to attend to other duties.—HOLDSWORTH v. SHANNON, Mo., 21 S. W. Rep. 85.

71. DESCENT AND DISTRIBUTION—Aliens.—Act June 16, 1887, which declares that non-resident aliens "shall not be capable of acquiring title to or taking or holding any lands or real estate in this State by descent, devise, purchase, or otherwise," is not invalidated by treaties between the United States and foreign powers except in regard to the citizens of countries who are by treaty given the right of inheriting and holding land in the United States.—WUNDERLE v. WUNDERLE, Ill., 33 N. E. Rep. 195.

72. DESCENT AND DISTRIBUTION—Domicile.—A resident of Missouri abandoned her home in that State, intending to become a resident of one of two cities in Illinois, and dies before adopting any home at either place: Held, that for the purpose of distribution of her estate her domicile was in Missouri.—COOPER v. BEERS, Ill., 33 N. E. Rep. 61.

73. DRUGGIST—Liability for Negligence.—In a civil action against a druggist for alleged neglect in the sale of drugs, evidence that he was a careful and prudent man in handling medicines and poisons is not admissible.—HALL v. RANKIN, Iowa, 54 N. W. Rep. 217.

74. EJECTMENT—After-acquired Title.—Where a person conveys by warranty deed land to which he has no title, and afterwards a deed of the property is made to him, and he conveys it to a second grantee, the said deed to him cannot be relied on by his second grantee as color of title in good faith, within the meaning of the statute of limitations, since the title acquired by such deed inured immediately to the first grantee.—GUERTIN v. MOMBLEAU, Ill., 33 N. E. Rep. 49.

75. EJECTMENT—Pleading — Limitations. — In ejectment, where the general statute of limitations is relied on as a defense, it is not necessary to plead it, since such defense is competent under a general denial.—BIRD v. SELLERS, Mo., 21 S. W. Rep. 91.

76. EJECTMENT— Railroad Company.—Where a railroad company, as assignee of a lease which authorizes the construction of a railroad track across the demised land, and provides for forfeiture of the lease in default of payment of rent, entered on the land and constructed its track thereon, and afterwards failed to pay rent, the lessor may maintain ejectment against the company, though he acquiesced in the building of the track, and he is not restricted to an action for the value of the ground taken, or for damages for breach of the conditions of the lease or to a suit in equity to compel compliance with its terms. — AVERY v. KANSAS CITY & S. RY. CO., Mo., 21 S. W. Rep. 90.

77. ELECTIONS—Ballots. — Where a statute provides that a ballot shall be of plain, white paper, clear and even cut, without ornaments, designation, mutilation, symbol, or mark of any kind whatsoever, except the name or names of the person or persons voted for and the office to which such person or persons are intended to be chosen, the word "designation" is, on account of its associate words, to be construed to intend only designations in the nature of ornaments, mutilations, symbols, or marks, as distinguished from words or writings; and hence ballots having on them, in the body thereof, the words "National Republican Ticket," and "Free Suffrage Ticket," are not illegal, or contrary to the purpose of the statute. — STATE v. SEXTON, Fla., 12 South. Rep. 218.

78. ELECTIONS—Errors in Ballots.—In canvassing the votes cast for representative in a county constituting a single representative district, it appeared that some of the ballots were cast by voters of that county on which the district was designated by an erroneous

number: Held, that the erroneous designation should be treated as surplusage, and that all of the votes should be counted.—WILDS v. STATE BOARD OF CANVASSERS, Kan., 32 Pac. Rep. 136.

79. ELECTION—Mandatory Provisions.—St. ch. 79, art. 13, § 1, relating to public schools provides that separate schools for white and colored children may be established in the territory as follows, "and in no other way." Section 4 provides that "not more than twenty days, nor less than ten days prior to" an election to determine the question of establishing separate schools for white and colored pupils, "the county commissioners of each county shall appoint in each election precinct in their respective counties two judges and one clerk, whose duty it shall be to hold said election." Section 8 provides that "any failure to comply with any and all the provisions of this act shall render such act of establishing separate schools void," etc.: Held, that the provision relative to the time of appointment of judges and clerks was directory only, and the fact that they were appointed 26 days prior to the election was not such failure to comply with the statute as would render the election void.—MARION v. TERRITORY, Okla., 32 Pac. Rep. 116.

80. ELECTIONS AND VOTERS—Ballots.—Where, by the returns of the canvassing board, a candidate is shown to have a plurality of the votes cast at an election, and the ballots used at the election were those furnished by the election commissioners, as provided by Pub. Acts 1891, No. 190, such candidate will not be defeated by the fact that the ballots bore "distinguishing and distinctive" marks, other than the vigentte provided by section 10 of this act; it not appearing that such candidate was a party to the placing of such marks on the ballots. — LINDSTROM v. BOARD OF CANVASSERS OF MANISTEE COUNTY, Mich., 54 N. W. Rep. 280.

81. EMINENT DOMAIN.—Land taken in a city for public parks and squares, advantageous to the public for recreation, health, or business, is taken for a public use and the power of eminent domain extends thereto. A question whether the use for which private property is authorized by the legislature to be taken is in fact a public use is one for the courts to determine, but the extent to which property shall be taken for such use rests wholly in the legislative discretion, provided that just compensation is made for all so taken.—SHOEMAKER v. UNITED STATES, U. S. S. C., 13 S. C. Rep. 361.

82. EMINENT DOMAIN — Condemnation by Federal Court.—The New Jersey practice, whereby the action of the State courts in appointing condemnation commissioners, as well as the award of damages made by the commissioners, may be reviewed by the State supreme court on *certiorari*, is also inapplicable to condemnation proceedings in the federal circuit court; and such proceedings can only be reviewed by a writ of error taken from a final judgment.—LUXTON v. NORTH RIVER BRIDGE CO., U. S. S. C., 13 S. C. Rep. 356.

83. EMINENT DOMAIN—Interest.—Where, in condemnation proceedings, after an affirmance of the award on appeal to the supreme court, the owner receives from the sheriff the amount awarded, and the railroad company pays the costs in the case, a subsequent application in the trial court, by the owner, to have the case redocketed, and an allowance of interest made on the award, is properly denied.—JAMISON v. BURLINGTON & W. RY. CO., 54 N. W. Rep. 242.

84. EMINENT DOMAIN—Measure of Damages.—When a railroad company, having power to condemn land, has been permitted by the landowner to enter and lay its tracks and make improvements without compensation first made, and afterwards the question of compensation arises in a suit in equity, the measure of compensation is the value of the land and damages at the time of entry, with interest. When, however, the company, under such conditions, takes a statutory proceeding to condemn such land, the measure of compensation is the value of the land and damages at the time of the appraisement.—TRIMMER v. PENNSYLVANIA, P. & B. R. CO., N. J., 25 Atl. Rep. 932.

85. EQUITY—Decree—Reversal on Motion.— Where a decree has been rendered in a cause upon a demurrer to the bill, an answer, a supplemental and amended answer, and replications thereto, upon depositions taken, and the report of a commissioner, which has been excepted to, the exceptions acted upon, and the principles of the cause have been adjudicated, such decree cannot be reversed upon motion under chapter 134 of the Code.—RADER v. ADAMSON, W. Va., 16 S. E. Rep. 808.

86. EQUITY—Setting aside Will.—In an action to set aside a will, plaintiff alleged his marriage with the devisor; the continuance of the marriage relation until her death; the execution of the will, devising all of her estate to another; the death of devisor; the proceedings in probate; his nonnotice thereof; and his nonappearance therein: Held, that the complaint was demurrable, as it did not state any ground for interference by a court of equity.—MITCHELL v. HUGHES, Colo., 32 Pac. Rep. 185.

87. EVIDENCE—Action to Recover Loan.—Where, in an action to recover money loaned to defendant for the purchase of certain shares of stock, it does not appear that defendant ever signed a memorandum or note agreeing to purchase the stock, or that the stock was ever delivered to him, or that any demand was ever made upon him for the purchase price, during the entire four years plaintiffs alleged that they "carried" the stock, evidence is admissible that, during this period, defendant, a business man, and solvent, had a large bank credit, as a circumstance which the jury might consider in determining whether or not there was a loan.—SELIGMAN v. ROGERS, Mo., 21 S. W. Rep. 94.

88. EVIDENCE—Parol Evidence.—In an action on a written lease reserving rent in money, evidence of a parol contemporaneous agreement that part of the rent was to be taken out in board is inadmissible.—STULL v. THOMPSON, Pa., 25 Atl. Rep. 890.

89. EVIDENCE—Receipt—Parol Evidence.—A written receipt may be explained or contradicted by parol testimony; but where it embodies a contract it cannot be contradicted, but is conclusive upon the parties, in the absence of fraud or mistake.—MORSE v. RICE.—Neb., 54 N. W. Rep. 308.

90. EVIDENCE—Res Gestæ.—In an action against a railroad company for the negligent killing of a brakeman while in its employ, the declaration of the brakeman that "that handhold let me down" made to a witness who had seen the accident when a few yards away, and had run to help the brakeman in answer to his call, after the exclamation by witness of "What in the world!" is not a part of the *res gestæ*, but is in the nature of a response to an inquiry.—LOUISVILLE & N. R. CO. v. PEARSON, Ala., 12 South. Rep. 176.

91. EXECUTION — Exemption. — Rev. St. 1881, § 715, provides that, when an execution defendant is absent from the State, his wife may make out and verify the schedule of his property, and claim and receive the exemption provided in the act, and "exercise all the rights which would belong to her husband were he present:" Held that, where the sheriff and execution creditor fail to pay the amount of the statutory exemption, the wife may maintain an action therefor, either in her own name or in the name of herself and her husband.—EISENHAUSER v. DILL, Ind., 33 N. E. Rep. 220.

92. EXECUTION—Claims of Third Person.—Code, § 3055 provides that an officer must levy an execution on any personal property in defendant's possession, unless the officer is served with written notice that the property "belongs to" others: Held, that the notice of ownership need not state the extent of the owner's interest, as the purpose of the statute is to enable the officer to obtain an indemnifying bond, and the notice is sufficient if it accomplishes that purpose.—WATERHOUSE v. BLACK, Iowa, 54 N. W. Rep. 342.

93. EXECUTION SALE—Distribution of Funds.—An auditor appointed to make distribution cannot go behind a judgment regular on its face, and deduct from it a sum due defendant from plaintiff in an independent transaction, which occurred nearly three years before revival of the judgment, where such revival was by agreement, and free from fraud or collusion.—IN RE FORD'S ESTATE, Penn., 25 Atl. Rep. 884.

94. EXECUTOR—Accounting.—Pub. St. ch. 189, § 24, providing that a residuary legatee may bring an action in the nature of anaccount, "against the executors of the estate of a testator," and may sue for and recover his proportionate part thereof, does not authorize a trustee to sue an executor in assumpsit to recover a portion of the residue of an estate bequeathed to his *cestui que trust*, so long as the amount of the residue is undetermined.—DROWN V. STAPLES, R. I., 25 Atl. Rep. 913.

95. FALSE IMPRISONMENT—Joinder of Parties.—In an action for false imprisonment against the sheriff who made the arrest, and the judge who issued the process, a motion for a change of venue, made by one defendant, is properly denied; collusion between his co-defendant and plaintiff not being established, and it appearing that both defendants are equally interested in the action.—ZELLER V. MARTIN, Wis., 54 N. W. Rep. 330.

96. FEDERAL COURTS—Jurisdiction—Diverse Citizenship.—A mortgage bondholder sued for a foreclosure, in behalf of himself and all the other bondholders, and the latter, though not made parties, intervened, by leave of court, and prayed a foreclosure. The controversy consisted of a cluster of questions, involving the validity of the mortgage, and the right of the bondholders to foreclose it: Held, that all such bondholders were indispensable parties, and, in determining the jurisdiction of the court, they were all to be considered as parties plaintiff; and, it having appeared that one of them was a citizen of the same State with several of the defendants, the jurisdiction failed.—MANGELS V. DONAU BREWING CO., U. S. C. C. (Wash.), 53 Fed. Rep. 513.

97. FERRIES—Right to Land Boat.—The operator of a private ferry, without license from a commissioners' court cannot land his boat on property condemned for a public road without the consent of the riparian proprietor thereof.—BUFORD V. SMITH, Tex., 21 S. W. Rep. 168.

98. FRAUDS, STATUTE OF—Equity.—An oral contract for the conveyance of an interest in land in compensation for services will not be enforced by a court of equity where the proof of the contract is not clear, even though the services have been rendered.—VOSE V. STRONG, Ill., 33 N. E. Rep. 189.

99. FRAUDULENT CONVEYANCE.—A judgment creditor may sue to set aside a voluntary conveyance by his debtor, without showing that his remedy at law for the collection of his judgment is exhausted.—WISCONSIN GRANITE CO. V. RAY, Ill., 33 N. E. Rep. 31.

100. GOOD WILL OF PARTNERSHIP.—The good will of a partnership is a part of the property of the firm; and where a partnership is dissolved, one of the partners transferring to the others all his interest in the firm business and assets, with the understanding that they are to succeed to the business of the old firm, such sale carries with it the seller's interest in the good will.—BRASS & IRON WORKS CO. V. PAYNE, Ohio, 33 N. E. Rep. 89.

101. HIGHWAY—Obstructing.—An indictment charging defendants with obstructing certain public highways, by erecting and maintaining in said highways a certain pole and post, is not bad for duplicity in that it charges more than one offense, when it appears that the obstruction, though affecting more than one road, was placed at their intersection.—CLIFT V. STATE, Ind., 33 N. E. Rep. 211.

102. HOLIDAY—Writ of Attachment. — An order made by a judge on Sunday or a legal holiday, allowing an attachment in an action on a debt not due, is void.—MERCHANTS' NAT. BANK OF OMAHA V. JAFFRAY, Neb., 54 N. W. Rep. 258.

103. HOMESTEAD—Abandonment — Evidence.—On the question of whether plaintiffs have abandoned their homestead, evidence that before going away plaintiffs took legal advice that such absence would not constitute an abandonment if there was a *bona fide* intention to return, is admissible as *res gestæ*.—PAINTER V. STEFFEN, Iowa, 54 N. W. Rep. 229.

104. HOMESTEAD—Sale on Execution.—Where a sheriff levied an execution, and had set off, in accordance with the statutes, certain land to the debtor as his homestead, all the rest of the debtor's land levied on was subject to sale; and the debtor could not afterwards abandon his homestead, and move onto another tract, and sell that which had been set off to him, and then claim as his homestead the new selection. — RICHIE V. DUKE, Miss., 12 South. Rep. 208.

105. HUSBAND AND WIFE—Antenuptial Contract.—An antenuptial agreement providing that the wife shall "claim no right of dower or homestead in or to any property" of the husband does not deprive the wife of her distributive share in her husband's personal property.—PITKINS V. PEET, Iowa, 54 N. W. Rep. 215.

106. HUSBAND AND WIFE — Gift. — Where the transfer of property to a wife by her husband was before the operation of the Code of 1880, declaring invalid unrecorded transfers from husband to wife, and the gift was made while the parties resided in Alabama, it was good between the parties, and the statutes of that State could have no effect after the persons and property came under the laws of Mississippi. — WALKER V. MARSEILLES, Miss., 12 South. Rep. 211.

107. INFANCY — Judgment. — In an action by a former ward, after becoming of age, to set aside a sale of land under execution, issued on a judgment rendered against him while a minor, and against another person as his guardian, but who was not such guardian, the latter is not a necessary party. — WICHITA LAND & CATTLE CO. V. WARD, Tex., 21 S. W. Rep. 128.

108. INFANCY—Married Woman.—A married woman is not liable for materials furnished and labor done while she was a minor and unmarried in repairing a dwelling house of which she was part owner, though the repairs were necessary to prevent immediate and serious injury to the house. — PHILLIPS V. LLOYD, R. I., 25 Atl. Rep. 909.

109. INJUNCTION — Violation of Contract. — A natural gas company which has agreed with a borough to furnish gas to a schoolhouse in consideration of the right of way granted to it will be restrained by injunction, at the suit of the district, from afterwards shutting off the gas supply at such schoolhouse.—SCHOOL DIST. OF BOROUGH OF SEWICKLEY V. OHIO VAL. GAS CO., Pa., 25 Atl. Rep. 868.

110. INSOLVENCY — Preferences. — The form of the instrument or act by which the preference forbidden by the statute, whether by deed of trust, assignment, or sale, is accomplished is not material, so that it results in such a preference, it being the design of the statute to prevent an insolvent debtor from devoting his property to work a preference among his creditors. —WOLF V. MCGUGIN, W. Va., 16 S. E. Rep. 797.

111. INSURANCE—Conditions of Policy.—Where one of three partners insures the property of the firm as his own, without representing the facts to the company, it will avoid a policy stipulating that "it shall be void if other persons than the insured have an interest in the property, unless it is so represented to the company and expressed in the policy. — MCFETRIDGE V. PHOENIX INS. CO. OF BROOKLYN, N. Y., Wis., 54 N. W. Rep. 326.

112. INSURANCE—Interpretation of Policy.—In a policy of insurance the house insured was described as "occupied as a sporting house:" Held that, as the term "sporting house" has an innocent as well as guilty meaning, it cannot be said, without proof of the sense

in which it was used, that the policy shows conclusively that the occupancy of the house was for unlawful purposes. — WHITE v. WESTERN ASSUR. CO. OF TORONTO, Minn., 54 N. W. Rep. 195.

113. INSURANCE — Notice of Agent.—In a suit on a fire policy by the grantee of the premises insured, who was also the assignee of the policy, where there was evidence that defendant's agent, who was informed of the details of the assignment, and forwarded the policy to defendant for a transfer of the insurance, was a general agent of defendant, and his authority was in writing, but was not produced on the trial, the jury were justified in finding that notice to such agent of a mortgage on the premises at the time of the assignment was notice to defendant, and binding on the latter, where it approved the assignment. — FRANE v. BURLINGTON INS. CO., Iowa, 54 N. W. Rep. 237.

114. INSURANCE — Title to Property.—Where a fire insurance policy contains a warranty that the assured is the unconditional owner of the property insured, and provides that a breach of warranty avoids the policy, the insurance company will not escape liability because the assured has a contract for a deed of the property, if the company was informed as to the title when the insurance was applied for, but issued the policy with such warranty, and accepted the premium thereon.—MCMURRAY v. CAPITAL INS. CO., Iowa, 54 N. W. Rep. 354.

115. INTOXICATING LIQUORS—Injunction.—On October 8, 1889, plaintiff pleaded guilty to a complaint for seling liquor contrary to law, and stipulated that a temporary injunction might issue against him, which the court issued accordingly. On May 9, 1891, a decree was signed by the court as of October 8, 1889, permanently enjoining defendant from further violation of the law, and served on him June 29, 1891: Held, the court might order a permanent injunction at any time while the case remained for action on its docket; and the fact that defendant consented to a temporary injuction did not rob the court of its right to make it permanent on a plea of guilty.—CUNNINGHAM v. GAYNOR, Iowa, 54 N. W. Rep. 248.

116. JUDGMENT—Equitable Relief.—A court of equity will not relieve a defendant from a judgment at law obtained against him by default because of the failure of his attorney to file a plea for him.—BARDONSKI v. BARDONSKI, Ill., 33 N. E. Rep. 39.

117. JUDGMENT — Pleading Foreign Judgment.—Where a judgment of a justice of the peace in Kentucky, in garnishment proceedings, is invoked as a defense to an action in Indiana, the certified transcript must show that the justice had jurisdiction of the person of defendant therein, and of the subject-matter, and that the Kentucky statutes on which the proceedings were predicated have been complied with.—LOUISVILLE N. A. & C. RY. CO. v. PARISH, Ind., 33 N. E. Rep. 122.

118. JUDGMENT—Special Appearance.—In an action before a county court the defendant appeared for the sole purpose of objecting to the jurisdiction of the court, which objection was overruled; and, the defendant not appearing further, judgment was rendered against him: Held, that such appearance did not deprive him of the right to have the judgment set aside, under the provisions of said section 1001.—MCCORMICK HARVESTING MACH. CO. v. SCHNEIDER, Neb., 54 N. W. Rep. 257.

119. JUDGMENT BY DEFAULT — Vacating.—The mere fact that a defendant in default files an answer without leave of court after a motion for default has been served on him, which answer sets up a meritorious defense, does not show an abuse of discretion by the trial court in granting the default, and if afterwards, refusing to vacate the judgment, in the absence of any showing why the answer was not filed within the time prescribed by law.—HAYNES v. B. F. SCHWARTZ CO., Wash., 32 Pac. Rep. 220.

120. JUDGMENT LIEN—Sale.—A bank holding a tax lien which was superior to all other liens on a certain lot, and a judgment which was superior to plaintiff's mortgage on the lot, and also a lien on other real estate, had the lot first sold to satisfy its tax lien, and then the other real estate to satisfy its judgment, after which it attempted to have the lot again sold to satisfy an unpaid balance still due on the judgment. The decree under which this was done provided that the lot should be sold, and the proceeds applied first to payment of the tax lien, and then to plaintiff's mortgage. The decree also allowed the bank to levy on the lot for the satisfaction of its judgment after having levied on the other real estate: Held, that the sale of the lot under the superior tax lien extinguished all other liens including that of the judgment, and gave the purchaser a clear title.—FIRST NAT. BANK OF INDIANAPOLIS v. HENDRICKS, Ind., 33 N. E. Rep. 110.

121. LANDLORD AND TENANT.—In an action for the possession of land, where it appears that plaintiff, being in possession, leased the land to defendant, and placed him in possession, in the absence of fraud on the part of plaintiff in making the lease, it is no defense that the land is tide land, the title to which was in the United States when the lease was made.—COLUMBIA & P. S. R. CO. v. BRAILLARD, Wash., 32 Pac. Rep. 221.

122. LANDLORD'S LIEN.—Mules purchased by a tenant of his landlord are "supplies," within the meaning of Code 1880, § 1301, giving a landlord a lien on the crops produced by the tenant for all advances for supplies furnished during the term of the lease.—TRIMBLE v. DURHAM, Miss., 12 South. Rep. 207.

123. LIBEL.—A complaint, in an action for libel, alleging that defendant, in his newspaper, published an article charging plaintiff with "working a bluff game" on the new railroad; that he, by "misrepresentations," had secured the right of way along the line; and that he was now "trying to bleed" the C railroad into buying him out, states a good cause of action, as such charge, if false, is libelous.—PATCHELL v. JAQUA, Ind., 33 N. E. Rep. 132.

124. LIEN FOR THRESHING GRAIN.—In order to preserve a lien for threshing grain, under chapter 88, Laws Dak. T. 1889, the statement which that statute directs shall be filed must contain a description of the land whereon the grain upon which the lien is claimed was grown.—PARKER v. FIRST NAT. BANK OF LIBSON, N. Dak., 54 N. W. Rep. 313.

125. LIMITATIONS—Abstracts of Title.—The statute of limitations begins to run against the right to sue an abstract maker for errors in an abstract of title made by him, from the time the abstract is furnished, and not from the time the damage occurs.—RUSSELL AND CO. v. POLK COUNTY ABSTRACT CO., Iowa, 54 N. W. Rep. 212.

126. LIMITATIONS OF ACTIONS—Surety.—Under Code, § 2539, which provides that causes of action founded on contract may be revived by an admission in writing, signed "by the party to be charged thereby," letters signed by the maker of a note in which he admits the debt, and promises to pay, do not revive the debt against the surety.—DRAKE v. STUART, Iowa, 54 N. W. Rep. 223.

127. LOGS AND LOGGING—Liens.—Gen. St. § 1679, provides that every person performing labor on, or who shall assist in obtaining or securing saw logs, shall have a lien thereon for labor, or in securing the same. Section 1680 provides that every person performing labor on, or who shall assist in manufacturing saw logs, has a lien on the lumber: Held, that such statutes provided for two distinct classes of liens, and that a lien for labor on, or in securing, saw logs, did not attach to the lumber into which such logs were afterwards manufactured.—WINSOR v. JOHNSON, Wash., 32 Pac. Rep. 215.

128. MALICIOUS PROSECUTION—Evidence.—In an action for malicious prosecution, evidence that a person, at the time of his alleged malicious prosecution and

arrest was a married man, is comptent; the deprivation of the society of one's wife and family, and the taking away of such person from his wife, being an element of damage in such action.—KILLEBREW v. CARLISLE, Ala., 12 South. Rep. 167.

129. MANDAMUS TO CANVASSING BOARD. — After the board of State canvassers has canvassed all the returns from all the counties of the State, and declared the results, and ordered certificates, as prescribed by the statute, and then, having completed its labors, adjourns without day, it is *functus officio*,—officially dead; and the courts have no power to compel the board to reassemble or recount any returns.—ROSENTHAL v. STATE BOARD OF CANVASSERS, Kan., 32 Pac. Rep. 129.

130. MARRIED WOMAN—Assignment of Mortgage.—As the constitution gives a married woman an absolute power of alienation as to her separate estate, where such married woman assigns a mortgage and note held by her to creditors of her son, who are threatening to sue him, and the assignment is under seal and absolute in its terms, it is an actual and valid transfer of the property.—LANGSTON v. SMYLEY, S. Car., 16 S. E. Rep. 771.

131. MARRIED WOMAN—Easement.—Where a married woman, who is the owner of a tract of land lying on a creek, for a valuable consideration, gives her verbal assent that a party may build a tramroad along said creek, through her said lands, for the purpose of transporting timber from lands lying above hers to market, and in pursuance of said verbal assent said party, at considerable expense, under her immediate observation, constructs such road, and operates the same for some time a court of equity will restrain her, by injunction, from obstructing said road, and thereby defeating its use as aforesaid.—TUFTS v. COPEN, W. Va., 16 S. E. Rep. 793.

132. MASTER AND SERVANT — Contributory Negligence.—Where an employee of a railroad company receives an injury which is caused by his acting in direct violation of a reasonable rule made by said company for the safety of its servants, of which rule he has notice, and has promised to obey, he must be deemed guilty of contributory negligence, and cannot recover damages from the company for such injury.—OVERBY v. CHESAPEAKE AND O. RY. CO., W. Va., 16 S. E. Rep. 813.

133. MASTER AND SERVANT — Evidence.—Under the issues presented by the pleadings the question presented is whether or not the plaintiff was employed by the firm of W & G, and rendered services for it, or whether he was employed by G, his father, and represented him, as a member of the firm: Held, that the evidence clearly established the fact that the plaintiff was employed and represented G, his father, and not the firm of W & G, and that such firm was not liable for his services.—GLADE v. WHITE, Neb., 54 N. W. Rep. 259.

134. MECHANIC'S LIEN. — A father who intrusts the management of a farm to his son, and who is present during the construction of a well on the premises under a contract entered into by the son, and himself selects the cite, is not relieved from liability because he did not approve of the son's judgment, or the policy of his course, in contracting for the well.—BRAY v. SMITH, Iowa, 54 N. W. Rep. 222.

135. MECHANIC'S LIENS.—A mechanic's lien on property cannot be made to include work done on other and separate property.—LAMBERT v. WILLIAMS, Tex., 21 S. W. Rep. 108.

136. MECHANIC'S LIEN.—Code Civil Proc. § 1183, provides that, where a building contract is void because it is not recorded, the materials furnished shall be deemed to have been furnished at the personal instance of the owner, and the material-man shall have a lien for the value thereof: Held that, where materials used in the construction of a flume were furnished before the contract for the construction thereof was recorded, the material-man is entitled to a lien against the flume for the value thereof.—GIANT POWDER CO. v. SAN DIEGO FLUME CO., Cal., 32 Pac. Rep. 172.

137. MECHANIC'S LIEN.—Defendant contracted to sell land, but the agreement gave the vendee no right of possession until he had paid the entire price. Before making any payment, the vendee entered and began excavations, the continuance of which work defendant forbade, when she discovered it. Subsequently the first payment was made, and there was some evidence that defendant then consented to finishing the excavation, but the proof was clear that she declined to allow anything further to be done until the last payment had been made: Held, that the consent of the owner to the doing work and furnishing materials on a building on the lot, which is necessary for a valid lien, was not shown.—COWEN v. PADDOCK, N. Y., 33 N. E. Rep. 154.

138. MECHANIC'S LIEN.—Under Const. art. 16, § 37, and Rev. St. Gen. Prov. § 3, one who has no title to land when he enters into a contract for the erection of a building thereon, but who acquires title pending the performance of such contract, is an "owner," within the meaning of Sayles' Civil St. art. 3164, which gives a lien to mechanics and material-men furnishing labor or material on a building under a contract with the "owner" or his agent.—SCHULTZE v. ALAMO ICE & BREWING CO., Tex., 21 S. W. Rep. 160.

139. MECHANIC'S LIEN — Assignment.—Code Civil Proc. § 1183, provides that "all persons and laborers of every class, performing labor upon, or furnishing materials to be used in the construction" of a building, may have a lien thereon for such services or materials; and section 1187 provides that such persons shall themselves file a claim for record, stating the character of the labor or materials which they themselves furnished for the building: Held, that the right to assert such a lien is a personal right, for the laborer's own protection, and cannot be assigned.—MILLS v. LA VERNE LAND CO., Cal., 32 Pac. Rep. 169.

140. MINING LEASE TO ALIEN.—Prior to the act of Congress of March 3, 1887, known as the "Alien Act," there was nothing in the laws of the United States nor of the territory of Idaho prohibiting aliens from holding and working mining ground under a lease from one qualified, and who had made a proper location of such mining ground.—AH KLE v. MCLEAN, Idaho, 32 Pac. Rep. 200.

141. MORTGAGE—Assignment.—Authority to assign a mortgage as agent need not be in writing.—MORELAND v. HOUGHTON, Mich., 54 N. W. Rep. 285.

142. MORTGAGE—Foreclosure.—Where a wife joins her husband in the execution of a mortgage on certain lands owned by him, and in the proceedings for the foreclosure of the mortgage the wife is not made a party defendant, she, upon the death of her husband, may redeem the mortgaged lands upon the payment of the mortgage debt.—MCGOUGH v. SWEETZER, Ala., 12 South. Rep. 163.

143. MORTGAGES — Merger.—When the grantee of mortgagor buys in and takes assignment of a mortgage upon the premises conveyed, the mortgage so purchased does not merge, except in the case when the grantee has assumed payment of mortgage as part of consideration for the conveyance of the fee, or has manifested or declared an intention to have it merge.—WESTHEIMER v. THOMPSON, Idaho, 32 Pac. Rep. 205.

144. MORTGAGE — Avoidable Sale.—A delay of over four years in bringing suit to set aside a mortgage sale is such laches as will defeat the right to set it aside, where the only irregularity shown in regard to the sale is that the mortgagee failed to publish notice of sale four times, as required by Rev. St. 1891, ch. 95, § 14, since such omission merely renders the sale voidable.—CORNELL v. NEWKIRK, Ill., 33 N. E. Rep. 37.

145. MUNICIPAL CORPORATIONS.—Where an ordinance requires a certain street to be paved its entire width,

and a 16-foot strip in said street is occupied by street-car tracks under an ordinance requiring the street-car company to grade, pave, and keep in repair the part of the street used by it, an assessment roll in which the cost of the paving is assessed against the adjoining lots, so far as they are benefited, and the balance against the city, to be paid for by general taxation, should not be confirmed, since it relieves the street-car company from the burden of paving its portion of said street.—CITY OF CHICAGO v. CUMMINGS, Ill., 33 N. E. Rep. 34.

146. MUNICIPAL CORPORATIONS — Abandonment of Streets.—When a public road is taken into a city, town, or village by its charter of incorporation, it becomes the duty of such city, town, or village to keep such road in repair, unless it is abandoned as a public road in the manner provided by law. Proof of abandonment devolves on the city, town, or village.—HANLEY v. CITY OF HUNTINGTON, W. Va., 16 S. E. Rep. 807.

147. MUNICIPAL INDEBTEDNESS—Constitutional Limitation.—The constitutional prohibition against a city's incurring any indebtedness in excess of 1 1-2 per cent. of the valuation of the taxable property within its limits is not the source of the city's power to incur indebtedness, but a limitation on such power; and hence a newly-incorporated city has the power to incur indebtedness before the value of its taxable property is ascertained, the presumption being that it is acting properly in so doing.—CHILDS v. CITY OF ANACORTES, Wash., 32 Pac. Rep. 217.

148. MUNICIPAL CORPORATION—Contracts.—A city of the second class has authority to contract for water, electric light, and supplies for the fire department for the city, and to pay for the same out of the general revenue fund; but the levy for these and all other ordinary expenses of the city to be paid out of the general revenue fund cannot exceed 10 mills on the dollar of the property which is subject to taxation.—STEWART v. KANSAS TOWN CO., Kan., 32 Pac. Rep. 121.

149. MUNICIPAL CORPORATIONS — Defective Sidewalks. — A city charged with keeping the sidewalks of its streets in repair is liable for injury to a person, arising from a defective sidewalk, whether it have notice of the defect or not. — EVANS v. CITY OF HUNTINGTON, W. Va., 16 S. E. Rep. 801.

150. MUNICIPAL CORPORATIONS—Defective Sidewalks. — In an action to recover for injuries sustained by falling through a defective sidewalk, it appeared that before the accident defendant city knew of its defective condition, and ordered the tenant of the lot abutting on such sidewalk to repair it. This he did, but in a negligent manner. The defect was latent, and could only be discovered on a close examination: Held that, the duty of repairing sidewalks being primarily on defendant, the repairs made by the tenant of the abutting lot were in contemplation of law made by defendant, and the presumption was conclusive that defendant knew that the defect existed after such repair was made, and defendant's obligation to repair it continued until it was put in proper repair.—WOODARD v. CITY OF BOSCOBEL, Wis., 54 N. W. Rep. 332.

151. MUNICIPAL CORPORATION—Defective Sidewalks.—In an action to recover for injuries sustained by falling through a hatchway which defendant city permitted to be built near the center of a sidewalk on a public street, and directly in line with most of the travel over such walk, it is proper to submit to the jury the question whether the sidewalk was defective because of the improper location of such hatchway, and the consequent negligence of the city in respect to its location.—MCCLURE v. CITY OF SPARTA, Wis., 54 N. W. Rep. 337.

152. MUNICIPAL CORPORATIONS — Public Improvements. — Where the land owners have dedicated to the public the land of a street regularly located on the confirmed city plan, the street is "opened," so as to charge adjoining owners with the cost of constructing a sewer thereon.—CITY OF PHILADELPHIA v. THOMAS' HEIRS, Pa., 25 Atl. Rep. 873.

153. MUNICIPAL CORPORATION — Salaries of Officers.—A resolution by the common council of a city attempting to fix the salary of one of its officers is a resolution for the appropriation of money within a provision of the city charter that no resolution appropriating money shall be passed or adopted except by a majority vote of all the aldermen elect. — FOURNIER v. MAYOR, ETC., OF WEST BAY CITY, Mich., 54 N. W. Rep. 277.

154. MUNICIPAL CORPORATION — Street Crossings. — A city council is not obliged, in constructing a crossing at the intersection of two streets, where there is an off-set, to lay the crossing diagonally, so as to reach a corner at each end, but may lay it straight across, although by so doing part of a grass plat made by a property owner along the sidewalk, under authority of ordinance, may be destroyed, and travel induced across the corner of an unfenced lot. — BROWN v. BARSTOW, Iowa, 54 N. W. Rep. 241.

155. MUNICIPAL CORPORATION—Street Railway—Damage to Franchise. — The location of a sewer in a city street must be reasonable, with respect to the rights of a street railway, the construction of which was authorized by a prior ordinance, and whose property might be damaged by the construction of such sewer; and such location, if made in a part of the street occupied by the railway, so as to compel it to suspend operations, and inflict great damage upon it, is unreasonable, when other parts of the street are equally suitable for the sewer. But the city is not required to incur any additional expense by reason of having authorized the building of such road. — CLAPP v. CITY OF SPOKANE, U. S. C. C. (Wash.), 53 Fed. Rep. 515.

156. MUNICIPAL IMPROVEMENTS — Paving Street. — Property owners are not liable to an assessment for paving a strip previously macadamized, in the middle of the street, at expense of the property. — CITY OF PHILADELPHIA v. EHRET, Pa., 25 Atl. Rep. 888.

157. MUTUAL BENEFIT INSURANCE — Assessments. — Where a member of a benefit society is in default for non-payment of an assessment, which, by the rules of the society, forfeits his rights, the forfeiture is not waived by the society sending a notice of the next assessment, and calling attention therein that the prior assessment remained unpaid.—SCHMIDT v. MODERN WOODMEN OF AMERICA, Wis., 54 N. W. Rep. 264.

158. MUTUAL BENEFIT INSURANCE. — In an action against a Knights of Pythias Lodge by the widow of a deceased member, to recover the amount due her from the relief fund, a branch of the order, it appeared that after notice by defendant of such member's death, and that he was in good standing, as required by the by-laws, the money was paid by a bank to defendant's secretary, on a check drawn by the proper officer of the relief fund, payable to defendant, and by such secretary paid to defendant's presiding officer, who embezzled the same; and that the by-laws of the order required such benefits to be paid by the relief fund to defendant, and by it to the beneficiary: Held, that plaintiff was entitled to recover, though such by-laws require all money due defendant to be paid to its treasurer. — FISHER v. OLIVE BRANCH LODGE NO. 33, KNIGHTS OF PYTHIAS, Pa., 25 Atl. Rep. 869.

159. MUTUAL BENEFIT INSURANCE — Beneficiary. — Where a mutual benefit society organized for the benefit of relatives and persons dependent on members issues a certificate payable to the member's "affianced wife," the question whether she was really dependent on the member, and was therefore entitled to be a beneficiary, is a question of fact.—ALEXANDER v. PARKER, Ill., 33 N. E. Rep. 183.

160. NATIONAL BANK—Limitation of Action. — The limitation of two years within which suit may be brought against a national bank, under section 5198 of the Revised Statutes of the United States, for taking usurious interest, begins to run from the time when the usurious interest is paid.—FIRST NAT. BANK OF DORCHESTER v. SMITH, Neb., 54 N. W. Rep. 254.

161. NEGLIGENCE—Defective Bridges.—Where a child fell through defendant's bridge into a canal, in conse-

quence of defendant's negligence in permitting an opening to remain unguarded, and without contributory negligence on the part its parents, and the father, in an effort to rescue the child, plunged into the canal and both were drowned, the death of both must be attributed to defendant's negligence in maintaining the unsafe bridge.—GIBNEY v. STATE, N. Y., 33 N. E. Rep. 142.

162. NEGLIGENCE OF SERVANT. — In an action for personal injury resulting from the negligence of defendant's driver, whereby a barrel was thrown from his wagon, which struck and injured plaintiff, the court properly charged that the driver ought to have a general observation of the street he is driving on, and if, through careless driving, or failure to drive as a prudent man ought to drive, he injures one who is himself free from blame, the defendant is responsible. —LEDIG v. GERMANIA BREWING CO., Pa., 25 Atl. Rep. 870.

163. NEGOTIABLE INSTRUMENT—Corporations.—A note which recites that "We promise to pay," and is signed, "M. N., President World's Pastime Exposition Co. A. D. Treas.," is *prima facie* the individual note of M. N. and A. D.—MCNEILL v. SHOBER & CARQUEVILLE LITHOGRAPHING CO., Ill., 33 N. E. Rep. 31.

164. NEGOTIABLE INSTRUMENT — Discharge in Bankruptcy.—New notes, given by a debtor for a pre-existing debt after his discharge in bankruptcy, constitute enforceable legal obligations notwithstanding the discharge.—BRIDGMAN v. CHRISTIE, N. J., 25 Atl. Rep. 939.

165. NEGOTIABLE INSTRUMENT — Execution.—A complaint showing that defendants were engaged in business under a certain firm name and style, and borrowed from plaintiff a certain sum, and executed therefor their note, a copy of which was set out, signed with the firm name, sufficiently shows that the note was executed in the firm name, and connects defendants with the transaction.—RAINS v. BOLIN, Ind., 33 N. E. Rep. 218.

166. NEGOTIABLE INSTRUMENT — Irregular Indorsement.—An irregular indorsement of a negotiable instrument is insufficient of itself to charge such indorser, but evidence must be introduced other than that afforded by the instrument itself to show in what capacity such irregular indorser is liable.—HOLMES v. PRESTON, Miss., 12 South. Rep. 202.

167. NEGOTIABLE INSTRUMENT—Notes Signed as Officers of Corporation.—Where defendants signed a note with their individual names, adding thereto "president" and "secretary," respectively, in which note they promise to pay plaintiff bank a certain amount, and there is nothing on the face of the note to indicate a principal back of them, they are personally bound, and cannot set up a defense that they executed the note as officers of a corporation, that the loan which the note was given to secure was made to such corporation, and that the intention of both parties was that it should bind the corporation, and not defendants.—SAN BERNARDINO NAT. BANK v. ANDRESON, Cal., 32 Pac. Rep. 168.

168. PARTITION—Trustee.—A trustee in a deed of trust of personal property, after condition broken, has such interest in the subject of the trust as to entitle him to maintain a proceeding for partition under Code, § 2580 *et seq.*, providing that any tenant in a common of personal property may apply to any justice of the peace for a partition of it.—PORTER v. STONE, Miss., 12 South. Rep. 208.

169. PARTNERSHIP.— Where the purpose of a special partnership is to conduct a banking business and loan money, in the absence of an agreement to the contrary, a member of the partnership may borrow money of the firm for a private enterprise, and the firm will not be entitled to the profits of such enterprise.—TAYLOR v. LOVETT, Iowa, 54 N. W. Rep. 234.

170. PARTNERSHIP— Assignee.—An assignment by a partner of his interest in the firm dissolves the partnership between him and the other partners, and does not make his assignee a copartner; such assignee being entitled only to the assignor's interest in the surplus after the payment of all partnership debts and the settlement of all accounts between partners.—DE MANDERFIELD v. FIELD, N. Mex., 32 Pac. Rep. 146.

171. PARTNERSHIP — Dissolution. — In an action in equity, brought by one partner against another for a termination of the partnership and for an accounting, plaintiff may have an attachment against defendant to secure an indebtedness that may be found to be due to plaintiff from the partnership after the partnership assets are exhausted.—HANSON v. MORRIS, Iowa, 54 N. W. Rep. 223.

172. PARTNERSHIP — Judgment.— Where an action is brought against a firm for a partnership debt, and service is had on one partner only, a judgment rendered against him as for a personal debt is invalid.—DESSAUER v. KOPPIN, Colo., 32 Pac. Rep. 182.

173. PARTNERSHIP — Ratification. — Defendant and partner owned a mine, which they worked together till defendant, a non-resident, wired his partner to stop work on his account. The partner continued to work on his own account, and incurred debts, including that in a suit, in doing development and other work beneficial to the property. Defendant afterwards agreed to pay these debts if his partner would withdraw a certain claim against him and settle their interests in the mine as he proposed, defendant to share in the benefit of the work done by his partner as above: Held, that as the debt in suit was incurred in and about work beneficial to the mine, and as defendant had accepted the benefit thereof, he had so far ratified his partner's act as to be liable therefor.—MARKELL v. MATTHEWS, Colo., 32 Pac. Rep. 176.

174. PARTNERSHIP PROPERTY — Replevin. — Where specific articles of partnership property are levied on and seized by a sheriff for the individual debts of one member of the firm, as the sole property of such member, in disregard of the interests of the partnership, the partner against whom the execution was levied, with the other partners, may jointly maintain replevin to recover possession of such property.—FERGUSON v. DAY, Ind., 33 N. E. Rep. 213.

175. PRINCIPAL AND SURETY — Discharge.— Code, §§ 2108, 2109, declaring that, if a creditor refuse or neglect to bring suit on a matured claim for 10 days after having been requested by a surety, and does not permit the surety to do so, the latter "shall be discharged," applies regardless of whether the surety has been really injured.—SHENANDOAH NAT. BANK v. AYERS, Iowa, 54 N. W. Rep. 367.

176. PUBLIC LANDS— Grants in Aid of Railroads.— Where the location of a railroad line, whether valid or not, is approved by the land office, land withdrawn to satisfy a grant, as determined by such location, is not thereafter open to entry under the pre-emption or homestead laws; and a person attempting to make a homestead entry thereon cannot question the legal title of the railroad.—HAMBLIN v. WESTERN LAND CO., U. S. S. C., 13 S. C. Rep. 353.

177. QUIETING TITLE.—The remedy given by the statute of 1870 to compel the determination of claims to real estate can only be resorted to when the land owner, whose title or right is subject to an adverse claim, is in a position where it is beyond his power to put such claim to the test by any of the ordinary processes of the law.—ALBRO v. DAYTON, N. J., 25 Atl. Rep. 937.

178. QUIETING TITLE — Cloud on Title. — A recorded contract for the sale of land, executed by the owner's agent in violation of his powers, constitutes a cloud on title.—MONSON v. KILL, Ill., 33 N. E. Rep. 48.

179. RAILROAD AID BONDS — Estoppel. — Where the legislature gives a county authority, under a popular vote, to subscribe for stock in a railroad company, and issue its bonds in payment therefor, which the county does, a *bona fide* holder of one of such bonds has a right to presume that all the steps preliminary

to its execution have been regularly taken, if such fact be certified on the face of the bonds by the proper officers, whose duty it is to ascertain it and therefore a county is estopped from denying liability on such a bond on the ground that the election at which its issuance was voted on was not legally held for want of notice.—BOARD OF SUP'RS OF CUMBERLAND COUNTY V. RANDOLPH, Va., 16 S. E. Rep. 722.

180. RAILROAD COMPANIES — Eminent Domain—Estoppel.—When a person who owns the fee in a street consents to the appropriation thereof by a railroad company for a right of way, he is not thereby estopped from afterwards claiming damages for injury to the property thus appropriated, and for a depreciation in value of his abutting property, caused by the construction and operation of such road.—EVANSVILLE & R. R. CO. V. CHARLTON, Ind., 33 N. E. Rep. 129.

181. RAILROAD COMPANIES—Fires—Pleading.—Where, in an action to recover damages against a railroad company, the complaint alleges that sparks were emitted from defendant's engine through a defect in the spark arrester and through the negligence of the engineer, and blown by the wind against plaintiff's ice house, igniting and consuming it, the court will not under the rule that a pleading susceptible to two constructions must be construed least favorably to the pleader, presume that the wind designated was an "extraordinary" wind, and the proximate cause of the injury, in that it is not authorized to insert words into a complaint not used by the pleader.—CINCINNATI, I. ST. L. & C. RY. CO. V. SMOCK, Ind., 33 N. E. Rep. 108.

182. RAILROAD COMPANIES — Fires—Damages.—In an action against a railroad company for negligently setting a fire which destroyed plaintiff's growing fruit trees and vines, defendant cannot complain that the measure of damages applied by the court was their cash value, instead of the lessened value of the land, since plaintiff may waive the incidental damage to his farm caused by the destruction of the trees.—TEXAS & P. RY. CO. V. GORMAN, Tex., 21 S. W. Rep. 158.

183. RAILROAD COMPANIES—Negligence.—A railroad employee whose business is to remove the ashes, cinders, and fire from locomotives, to supply them with water and sand, and to aid in moving engine tanks, in the railroad yard, is engaged in work connected with the operation of a railway, within the purview of Code, § 1307, which makes railroad companies liable for injuries received by their employees in consequence of willful wrongs of their agents, "where such wrongs are in any manner connected with the use and operation of any railway."—BUTLER V. CHICAGO, B. & L. R. CO., Iowa, 54 N. W. Rep. 208.

184. RAILROAD COMPANIES—Negligence.—In an action against a railroad company for injuries sustained by a locomotive engineer, where the defense is that plaintiff was guilty of contributory negligence in running his train at too high a rate of speed, it is proper to admit evidence that fast mail trains, on well-ballasted roads, can run safely at the rate of 60 miles per hour, so as to acquaint the jury with all the different conditions under which a train can be operated with greater or less rapidity.—FT. WORTH & D. C. RY. CO. V. THOMPSON, Tex., 21 S. W. Rep. 137.

185. RAILROAD COMPANIES — Negligence.—Where a complaint states that defendant railroad company "killed and crippled" a steer, and caused it to be hauled from its track and placed on a public highway, and that plaintiff's team was frightened thereby, and ran away, thus causing him to be thrown from his buggy and injured, he need not prove that defendant killed and crippled the steer; the gist of the action being defendant's negligence in placing it on the highway.—BAXTER V. CHICAGO, R. I. & P. RY. CO., Iowa, 54 N. W. Rep. 350.

186. RAILROAD COMPANIES—Stock Killing.—In an action for killing stock trespassing upon defendant's right of way the jury is not obliged to accept as conclusive the positive evidence of the engineer that, although he was looking forward along the track, he did not see such stock until within 25 or 30 feet of them, if they believe from other evidence that at the time of the accident it was so light as to render such statement improbable.—LIGHTHOUSE V. CHICAGO, M. & ST. P. RY. CO., S. Dak., 54 N. W. Rep. 320.

187. RAILROAD COMPANIES — Stopping Trains at County Seat.—A train designated as a "fast mail train," and used mainly for carrying the mail, but which also has coaches for the use of passengers, is a "regular passenger train," within the meaning of Rev. St. 1891, ch. 114, § 88, which declares "that all regular passenger trains shall stop a sufficient length of time at the railroad station of county seats to receive and let off passengers with safety."—ILLINOIS CENT. R. CO. V. PEOPLE, Ill., 33 N. E. Rep. 173.

188. RAILROAD COMPANIES—Subscription—Damages.—Various persons subscribed to enable a railroad company to build an extension of its road, in consideration of the benefits to accrue therefrom to the subscribers, and of first mortgage bonds to be issued to them by the railroad company in an amount equaling their subscriptions: Held, in an action by one of the subscribers against the railroad company for its failure to issue the bonds after the completion of the extension, that the measure of damages was the highest market value of the bonds between the time they should have been delivered and the time of the trial, with interest thereon, and not the amount subscribed and actually paid the company.—SAN ANTONIO & A. P. RY. CO. V. BUSCH, Tex., 21 S. W. Rep. 164.

189. RAILROADS—Trespassers.—One walking along a spur track laid on the surface of a public alley, but not imbedded so as to become part of the roadway, is a trespasser; and the railroad owes him no duty except to avoid injuring him, if possible, after his presence is discovered.—MONTGOMERY V. ALABAMA G. S. R. CO., Ala., 12 South. Rep. 170.

190. RECEIVERS — Continuing Business.—In the absence of express authority from the court, a receiver placed in charge of a drug store, pending litigation in reference thereto, has no right to continue the business of the store, hire his son to clerk therein, and open a physician's office in connection therewith; and a claim presented by him for his son's services as clerk, rent, etc., is properly refused.—TERRY V. MARTIN, N. M., 32 Pac. Rep. 157.

191. RECEIVERS—Liability.—The receivers of a railroad company set up as a defense to an action against them to recover for injuries sustained by plaintiff that they had been discharged from the receivership by the court, and had relinquished control of the property of the company. No order was shown expressly discharging them, and they did not show that the receivership accounts had been acted upon, and a decree entered by the court discharging them: Held, an insufficient defense. — FORDYCE V. CHANCY, Tex., 21 S. W. Rep. 181.

192. RECEIVERS—Liabilities after Discharge.—A decree of the federal court, discharging receivers appointed by it, is a bar to any suit against such receivers for liability incurred solely by virtue of their office, and constitutes, when pleaded in pending suits, a complete defense; Act March 19, 1889, providing that the discharge of a receiver shall not abate any pending suit on a cause of action accruing against him as such receiver, not applying to judgments of courts of the United States discharging receivers appointed by them.—FORDYCE V. BEECHER, Tex., 21 S. W. Rep. 179.

193. RECORD—Negligence.—Under Code, § 1925, requiring the county recorder to index any instrument filed for record forthwith, any delay in indexing such an instrument is presumptive evidence of negligence.—FIRST NAT. BANK OF SUTHERLAND V. CLEMENTS, Iowa, 54 N. W. Rep. 197.

194. REPLEVIN — Set-off. — In Kansas unliquidated damages due for breach of warranties in the sale of a machine may be set off in favor of defendant in an action of replevin brought by the seller on the ground

of alleged breach of conditions in the chattel mortgage given to secure the deferred payments, since the plaintiff's claim in such case is really founded on contract, though the action, in form is for a tort.—CLEMENT V. FIELD, U. S. S. C., 13 S. C. Rep. 358.

195. RES JUDICATA—Appeal. — In trespass to try title, where defendant offers in bar as *res judicata* a judgment rendered in a former suit of forcible entry and detainer, under which a writ of restitution was awarded in favor of defendant against plaintiff, it is error to exclude such judgment on the ground that the suit in which it was rendered is still pending in the court of appeals — WESTMORELAND V. RICHARDSON, Tex., 21 S. W. Rep. 167.

196. RES JUDICATA—Mechanic's Lien.—In an action by contractors to enforce a mechanic's lien, the owner is not bound to plead and prove damages sustained by plaintiff's failure to comply with contract, and a decree therein is no bar to a subsequent action against plaintiff to recover such damages.—PHILLIPS V. LLOYD, R. I., 25 Atl. Rep. 909.

197. SALE—Delivery. — When, at or prior to the time of the execution of a bill of sale of personal property, the vendor, with intent to transfer the title and possession of the same, pointed it out to the agent of the vendee, where it was contained in boxes and crates, and stood in a warehouse, and subsequently locked the building, and delivered the key to such agent, who thereafter retained it, there was such an immediate delivery and actual and continued change of possession as fulfills the requirements of section 4657, Comp. Laws. —MORRISON V. OIUM, N. Dak., 54 N. W. Rep. 288.

198 SALE—Warranty — Estoppel. — Continued use of machinery purchased under a warranty, after knowledge of defects, may destroy the buyer's right to rescind the contract, but will not destroy his right to plead a breach of warranty to defeat a recovery, in whole or in part, in an action brought by the seller to recover the purchase price. — MINNESOTA THRESHER MANUF'G CO. V. HANSON, N. Dak., 54 N. W. Rep. 311.

199. SCHOOL LAND—Sale—Rescission.—A sale of school land by a county to one who agrees to locate it, as a part of the consideration, is void, because part of the consideration is other than money.—CASSIN V. LA SALLE COUNTY, Tex., 21 S. W. Rep. 122.

200. SCIRE FACIAS — Revival of Judgment.—Where a writ of *scire facias* to revive a judgment in ejectment avers that the judgment contained a finding that the plaintiff had the fee simple title to the land, the writ need not aver that the title to the land established in the ejectment suit has not expired before issuance of the writ.—WILSON V. TRUSTEES OF SCHOOLS, Ill., 33 N. E. Rep. 194.

201. SHERIFF — Defective Bond.—In an action of detinue the sheriff seized the property described in the writ, delivered it to defendants, and took from them the bond required by statute, except that it did not contain the condition "and pay all costs and damages which may accrue from the detention thereof" if defendants were cast: Held, that defendants being cast, the sheriff was liable on his bond to plaintiff for the costs and damages accruing from the detention of the property.—TRAWEEK V. HEARD, Ala., 12 South. Rep. 166.

202. TAX SALE—Fraud.—One J, who was in possession of land under a contract of sale with defendant, failed to pay the taxes as agreed, and the land was sold for taxes to F, who acquired a tax title thereto. F deeded the land to plaintiff, who leased it to J; defendant claimed that the tax deed was obtained by collusion between J and plaintiff: Held, that the presumption of fraud which arose from such acts was overcome by the positive testimoney of the parties to the transactions, where the acts were consistent with good faith.—KNUDSON V. LITCHFIELD, Iowa, 54 N. W. Rep. 199.

203. TELEGRAPH COMPANIES—Damages.—In an action against a telegraph company for failure to send a message summoning a physician to attend plaintiff's sick child, which failure delayed the arrival of the physician for several days, and until the child was beyond help, plaintiff is entitled to compensation, not for the mental suffering which resulted from the sickness and death of the child, but for the superadded pain and anguish which resulted from the physician's absence until it was too late to afford any relief.—WESTERN UNION TEL. CO. V. STEPHENS, Tex., 21 S. W. Rep. 148.

204. TELEGRAPH COMPANY — Damages.—Plaintiff delivered a message to defendant telegraph company at G, Tex., addressed to his agent in O, Cal., as follows: "Close the trade. I will come soon;" and, on his arrival at O, discovered that the message had not been delivered, and that the deal had failed, thus requiring him to return to G: Held, that plaintiff's expenses to and from California were proper items of damage against defendant, but not losses resulting from the sale of his property at a sacrifice before starting.—WESTERN UNION TEL. CO. V. SHUMATE, Tex., 21 S. W. Rep. 109.

205. TENDER — Sufficiency. — Where plaintiff, being unable to find defendant, in the presence of the latter's solicitor, tendered the amount due defendant in a suit to redeem to defendant's son, who was authorized to inform plaintiff that defendant would not execute the deed until he had received a receipt in full of all demands, the tender is sufficient to relieve plaintiff from liability for interest on the amount from that date.—CRAWFORD V. OSMUN, Mich., 54 N. W. Rep. 284.

206. TRADE LABELS—Unauthorized Use.—The Cigar Maker's International Union of America, a voluntary unincorporated association for the mutual benefit of its members, adopted a label to be placed on boxes containing cigars made by members of the union in all parts of the United States; several branches being established in Indiana. The label was registered under Act 1891, p. 317, which provides that any firm, person, corporation, or voluntary association that is a citizen of the State, entitled to the exclusive use of any lawful label, may obtain protection by filing a statement and fac simile thereof with the secretary of State, and which makes the unauthorized use of such label, when so registered, a crime: Held, that an indictment would not lie for its unauthorized use inasmuch as citizens of the State were not entitled to its exclusive use.—STATE V. HAGAN, Ind., 33 N. E. Rep. 223.

207. TRADE-MARK — Infringment.—Any person lawfully acquiring a knowledge of the composition of any medicinal preparation, not patented, has the legal right to manufacture and sell the same, if, by reason of the manner in which such knowledge is acquired, that would not constitute a breach of confidence or good faith.—WATKINS V. LANDON, Minn., 54 N. W. Rep. 193.

208. TRESPASSING ANIMALS—Communicating Disease. —Where defendant's animals entered on plaintiffs' lands, which were enclosed with a fence sufficient to exclude ordinary cattle, and communicated a dangerous disease to plaintiff's cattle, defendant is liable for the damages, though he did not know that his cattle were infected with such disease.—CLARENDON LAND INVESTMENT & AGENCY CO. V. MCCLELLAND, Tex., 21 S. W. Rep. 170.

209 TRESPASSING CATTLE—Damages.—Under an allegation that, through defendant's negligence, stock entered on plaintiff's pasture, and grazed down and tramped on the grass to such an extent that it was killed, it was proper, in the absence of a special exception to the petition, to show not only injury to the grass, but also permanent injury to the sod; the term "pasture" including not only the grass, but also the ground or sod from which it grows.—GULF C. & S. F. RY. CO. V. JONES, Tex., 21 S. W. Rep. 145.

210. TRIAL—Jury — Verdict.—The court, without the knowledge or consent of either party, after the retirement of the jury, told the bailiff that, should the jury

agree during the night, they might seal up their verdict, separate for the night, and deliver it into court in the morning. The jury did as directed, delivering it in the morning, in the absence of counsel and parties: Held, under Code, § 2805, providing that the jury may, with the consent of the court and the parties, seal up their verdict and separate before it is rendered, that such separation, did not necessarily avoid the verdict, and if not otherwise attacked it will stand.—WALKER v. DAILEY, Iowa, 54 N. W. Rep. 344.

211. TRIAL — Witness — Crose-examination.—In an action by a real-estate broker to recover commissions under an alleged contract to sell land, defendants may ask plaintiff on cross-examination whether he was in the employ of the purchasers, and received compensation from them for his transacting such sale, in order to discredit his testimoney in relation to the making of the contract on which suit was brought, though such defense was not pleaded.—DILLON v. FOLSOM, Wash., 32 Pac. Rep. 216.

212. TRUSTS.—Where a *cestui que trust*, by ratifying the acts of the trustee, participates in the trustee's breach of trust, whereby a loss results to the estate, the share of such *cestui que trust* in the trust property will be applied to make good the loss sustained by another *cestui que trust*, who did not participate in such breach.—EHLIN v. MAYOR, ETC., OF CITY OF BALTIMORE, Md., 25 Atl. Rep. 917.

213. TRUST — Declaration.—Deceased asked one C to draw an assignment of a bond and mortgage to plaintiff, declaring his intention to give them to plaintiff. Deceased, after receiving the assignment, bond, and mortgage from C, kept them a month, and delivered them, with other papers, to C,—the assignment being signed, but not acknowledged or recorded, —directing C to deposit them in the bank, where they remained at his death: Held, that there was no declaration of trust.—WADD v. HAZELTON, N. Y., 33 N. E. Rep. 143.

214. TRUSTS—Purchaser.—Where a *cestui que trust* is in possession of real estate, the legal title to which is in another, a purchaser from the latter takes it charged with notice of the trust.—PETRAIN v. KIERNAN, Oreg., 32 Pac. Rep. 158.

215. VENDOR AND PURCHASER—Specific Performance —Laches.—A clause in a contract for the sale of land to the effect that, if the title is found to be defective, then, unless the material defects are cured within 60 days, the earnest money shall be refunded, and the contract become inoperative, does not prevent the purchaser, in case the title proves defective, and the defects are not cured, from suing for specific performance by a conveyance of the defective title, with compensation to him for the defects.—LANCASTER v. ROBERTS, Ill., 33 N. E. Rep. 27.

216. VENUE—Change—Time of Application.—An application for a change of venue should not be denied as made too late, where it appears that defendant had no knowledge of the undue influence of plaintiff over the citizens of the county in which the case was set for trial, on account of which the change was sought, until after the time to make the application as prescribed by the rules of court.—OGLE v. EDWARDS, Ind., 33 N. E. Rep. 95.

217. WATERS—Drainage.—The owner of land adjoining a highway has no right to drain his land into a ditch in such highway by means of a drain which carries the water in a different direction from its natural flow.—DAVIS v. COMMISSIONERS OF HIGHWAYS, Ill., 33 N. E. Rep. 58.

218. WATERS—Riparian Rights.—Under the laws of this State, a person may acquire such qualified property in a landing or wharf on or along any of its navigable streams as will entitle such person to maintain a suit for damages against another for unlawfully or negligently obstructing or injuring the same.—FRY v. CAMPBELL'S CREEK COAL CO., W. Va., 16 S. E. Rep. 796.

219. WATER COMPANIES—Lien.—An agreement to furnish water to a mill upon condition that, if the water rent be not paid, the water company may enter on the premises, shut off the water, and take and hold possession of the "machinery and fixtures" until the same is paid, does not give the company a lien on the land, but merely a chattel lien on the "machinery and fixtures."—ST. JOSEPH HYDRAULIC CO. v. WILSON, Ind., 33 N. E. Rep. 113.

220. WATER-COURSE — Drainage. — Where surface water habitually flows off over a fixed and determinate course, having reasonable limits as to width, so as to be uniformly discharged at a definite point, though without having worn out a channel having definite and well-marked banks, the line of flow is a water-course, within the meaning of Rev. St. 1891, ch. 42, § 78, which declares that owners of land may drain the same "into any natural water-course."—LAMBERT v. ALCORN, Ill., 33 N. E. Rep. 53.

221. WIFE'S SEPARATE ESTATE—Execution Sale.—The sale of a wife's separate real estate under a personal judgment against her, which does not, in terms, direct the sale of the property, passes a title valid against collateral attack.—HENSON v. SACKVILLE, Tex., 21 S. W. Rep. 187.

222. WILLS—Charitable Bequests.—A bequest or devise in trust to promote, aid, and protect colored citizens of the United States in the enjoyment of their civil rights, as guarantied them by the constitution, and by which the trustees are directed to form a charitable corporation for such purpose, with power to employ all legal and moral means to prevent discrimination against such citizens, and to render aid in money, etc., and which further provides that in case the trust cannot be executed substantially, or shall become inoperative, the trustees shall convey the property to those entitled to it under the intestate laws, is valid.—IN RE LEWIS' ESTATE, Penn., 25 Atl. Rep. 878.

223. WILL—Construction.—Testator's will left his residence to his wife for life, at her death to be sold, and the proceeds to go to the residuary estate, which he gave to his two brothers equally, "and in case of the death of either of my said brothers, the share of the said residue" to his children: Held, where the widow filed her renunciation under the will, that thereupon she extinguished her life estate in testator's residence, and it became personal estate, and formed part of the residuum for distribution by the executors.—SMALL v. MARBURG, Md., 25 Atl. Rep. 920.

224. WILL—Construction.—Where a testator, in one clause of his will, devises a tract of land in fee, and in a subsequent clause devises the same land in fee to another person, the two devisees will take the land as tenants in common, each taking an undivided half.—DAY v. WALLACE, Ill., 33 N. E. Rep. 185.

225. WILL—Testamentary Trusts.—A will requiring a distribution by the wife of such balance of her husband's estate, among his near relatives, as she may not use for her comfortable maintenance, creates a trust—First, for her support; and, second, for the next of kin of the husband.—COX v. WILLS, N. J., 25 Atl. Rep. 938.

226. WILLS OF MARRIED WOMEN. — Code, § 2452, provides that the widow's share cannot be affected by any will of her husband unless she consents thereto within six months after notice to her of the provisions of the will, the word "share" including both personal and real property. This section is a part of Code, tit. 16, ch. 4, all the provisions of which in regard to the widow of a deceased husband are made applicable by section 2440 to the surviving husband of a deceased wife: Held, that the wife cannot by will deprive her surviving husband of his distributive share in her personal estate.—MAY v. JONES, Iowa, 54 N. W. Rep. 232.

227. WITNESS—Impeachment.—In an action involving the title to a lot of jewelry, one R, a son of plaintiff, testified that the property was, and always had been, plaintiff's. On cross-examination he was asked if he did not write a letter to defendant claiming to own the

property, and stating that he would put it into their partnership business as a portion of his capital. This he denied, but, on being shown the letter, admitted that he wrote it. Defendants offered the letter in evidence: Held, that it was admissible for the purpose of contradicting and discrediting the witness.—DOOLEY V. MILLER, Tex., 21 S. W. Rep. 157.

228. WITNESS—Transactions with Decedents.—Where a warrantor is made a party defendant in an action of trespass to try title, so as to render the judgment binding on him in favor of his vendees, he is a "party," within the meaning of the Texas statute which prohibits parties from testifying against the heirs or legal representatives of decedents, even though he has filed a disclaimer in the suit.—BENNETT V. VIRGINIA RANCH, LAND & CATTLE CO., Tex., 21 S. W. Rep. 126.

229. WITNESS — Transactions with Decedent.—Intestate, a short time before his death, sent for H, and told him that he had a certain sum deposited in bank, which he wanted to give to T, whereupon intestate delivered his check therefor to H, drawn to the latter's order, and H in turn gave a duebill in the same sum to T: Held, where such check was drawn to H's order simply for convenience, and he had no beneficial interest therein, that he was competent to prove the declarations of decedent when he signed the check.—IN RE TAYLOR'S ESTATE, Penn., 25 Atl. Rep. 1061.

230. WRONGFUL ATTACHMENT.—Where an attachment is premature and unlawful, the only remedy, in the absence of malice, is on the attachment bond.—FRANTZ V. HANFORD, Iowa, 54 N. W. Rep. 474.

231. WRONGFUL ATTACHMENT—Parties.—In anaction for wrongful attachment, the principal in the attachment bond are proper parties, though the bond was signed was only by the sureties.—HOSKINS V. WHITE, Mont., 32 Pac. Rep. 163.

ABSTRACTS OF DECISIONS OF MISSOURI COURTS OF APPEAL.

ST. LOUIS COURT OF APPEALS.

INSURANCE—Proof of Loss—Waiver.—In a suit upon an insurance policy where the defense was made that proper proofs of loss were not made within thirty days, the time stipulated in the policy for making such proofs, the evidence showing that the loss occurred on April 20, that three days after the loss the assured wrote to the company assigning cause of loss, that on May 17 he forwarded to the company proofs of loss sworn to by him before a notary public, the only objection to such proofs being that the certificate of the magistrate was not annexed, as required by the policy, that such proofs were returned to plaintiff May 27 with the indorsement "received at Freeport, Ill., and sent to Calhoun & Harrison for adjustment," that on June 7 Harrison came to Marshfield when plaintiff offered to make any and all corrections and Harrison replied "it is too late for any corrections," it was held, that the conduct of the company in holding proofs of loss until the time in which they were required to be made had expired, without objection to the proofs as made, although received by it three days before the expiration of the time, and although plaintiff was but one day removed from it, and the reference of the claim by it to an adjuster, was evidence of a waiver of the proof of loss as required by the policy which entitled plaintiff to go to the jury on that question. Affirmed.—HAZZARD V. INSURANCE CO.

JUDGMENTS— Res Adjudicata.—A copartner or cotenant of personal property is not bound by a judgment rendered against one as his copartner or cotenant so as to be precluded from showing that such person was not his copartner or cotenant at that time. Reversed.—LLOYD V. TRACY.

JUSTICE OF THE PEACE—Change of Venue—Jurisdiction.—After the filing of an affidavit, for a change of venue, in due time and form the justice must grant the change, but if he fails or refuses to do so he does not lose jurisdiction of the case. The only remedy of the aggrieved party is by *mandamus*. Reversed.—STATE V. BRUMLEY.

LESSOR AND LESSEE—Apportionment of Damages—Condemnation.—In an action by the lessee a proportion of the money received by his lessor, awarded as damages by the commissioners in a condemnation proceeding, against the property, the commissioners failing to apportion the damages, the assessment being awarded to John H. Reel or owner and paid to him, held, that plaintiff is entitled to relief. Reversed.—MCALLISTER V. REEL.

LIENS—Sec. 4914, Rev. St. 1889.—As Sec. 4914, Rev. St. 1889 is a statute of exemptions and not of priorities or liens, the amount of purchase money of a chattel remaining unpaid is not of itself a lien on the chattel of which all purchasers having knowledge of the fact are bound to take notice.—Reversed.—LIPPMAN V. CAMPBELL.

MASTER AND SERVANT—Damages.—In a suit by an employee to recover damages for a personal injury caused by the negligent act of master's foreman, held, that master is bound to furnish machinary that is reasonably safe and to keep it in repair, and that this is a duty he cannot divest himself of.—Affirmed.—HUGHLETT V. OZARK LUMBER COMPANY.

MECHANIC'S LIENS—Mortgage—Priority.—A bought a piece of property from B and to secure a portion of the purchase money immediately reconveyed the land to B. A subsequently erected a saw mill on the land. After the completion of the mill C furnished to A various articles that were used in repairing the mill, and filed a mechanic's lien on theproperty for the same, held, in a suit between him and the purchasers of the property at a sale under the mortgage that they had no lien for repairs as against them. Affirmed.—REED V. LAMBERTSON.

PARTIES TO ACTIONS—Ejectment—Action from Improvements.—It is no defense to a suit by a party to recover for the value of improvements made by him during his occupancy on land of which he has been dispossessed by judgment in ejectment that he entered upon the land under a deed to his wife, as the possessory title was in the husband and the statute evidently means that the person having the possessory title is entitled to recover the value of improvements made by him. Affirmed. — LANE V. ALLEN.

PRACTICE IN CIVIL CASES—Certiorari—Jurisdiction. Upon the filing in the circuit court, after several mistrials before a justice of the peace in an action of forcible entry and detainer, of plaintiff's petition for a writ of *certiorari* the circuit court acquires jurisdiction. Affirmed.—MASON V. PENNINGTON.

PRACTICE IN CIVIL CASES—Motion to Dismiss.—Upon motion in circuit court to dismiss an appeal from a judgment of a justice of the peace on the ground that at the time the suit was instituted plaintiff had a like action pending before the same justice, between the same parties, and in which the subject matter was the same, the appeal was dismissed without any testimony being heard: Held, that whether or not a like suit was pending before some other court in the State, having jurisdiction of the person and subject-matter, was a question of fact and it was error to dismiss without proof that such was the case.—Reversed—LANGFORD V. CITY OF DONIPHAN.

PRACTICE IN CRIMINAL CASES — Appeals.—Sec. 1565 R. S. 1889.—Sec. 1565 R. S. 1889 requires that the party who takes an appeal from the recorder's court in case of a prosecution for the violation of an ordinance of a city of the third class shall prosecute his appeal in like manner as appeals from justices of the peace

in cases of misdemeanors are prosecuted. Appeals from judgments of justices of the peace in cases of misdemeanor to the circuit court or other court having jurisdiction in criminal cases, if the party taking the appeal shall immediately after judgment is rendered file an affidavit stating that he is aggrieved by the verdict etc., held, that "immediately" means within twenty-four hours, subject to the right of the State to show that special circumstances required that such affidavit should have been filed in a less time.—Affirmed—CITY OF DESOTO v. MERCIEL.

STOPPAGE IN TRANSITU—Vendor and Vendee.—Where goods have been delivered by a common carrier to a person engaged in the general transfer business, who has authority from the vendee to receipt for freight and transfer all goods held by carrier for delivery to vendee as vendee directs, held, delivery to him is delivery to vendee and deprives the vendor of his of his right stoppage in transitu.—Reversed—ONEAL v. DAY.

KANSAS CITY COURT OF APPEALS.

CRIMINAL LAW — Auctioneer's License.—Where an owner of a stock of goods attempts, immediately after their purchase, to sell them out at auction, he must first secure an auctioneer's license. He is not within the exemption of Sec. 693, Rev. St. 1889, and if he sells at auction without such license he is liable to prosecution under the provisions of ch. 14, Rev. St. 1889, even though he employ another to cry the goods. —STATE OF MO. v. WHEAT.

CRIMINAL LAW—Defense of Property.—It is the duty of a bailee to protect his bailment, but he is not authorized by law to use the "shot gun argument" in its defense. It is the law that one in the defense of his person or relatives, or in resisting aggressions on his property, must not employ more force than is necessary in the exercise of reasonable judgment, to prevent the consummation of the injury.—STATE OF MO. v. MARTIN.

EVIDENCE.—Postal cards received by post in answer to letters written and mailed by plaintiffs to defendant are admissible in evidence without proof of the signature.—COHILL, COLLINS & CO. v. PICKEL.

EVIDENCE—Experts.—An expert may give an opinion based on a state of facts which he himself has witnessed, or which are detailed to him by other witnesses, or which are put to him in the form of a hypothetical question. The subject must be one of science or skill, or one of which observation or experience has given an opportunity and means of knowledge which exists in reason rather than descriptive facts. The facts embraced in the hypothesis must, in every case, be within the confines of the evidence.—RILEY v. SPARKS.

FALSE REPRESENTATION—Damages.—There are three phases in which a case of false representation may appear: 1st. Where the vendee relies solely and alone upon the false representations of the vendor, 2nd where the vendee is induced to invest by the combined false representations of the vendor and information received from other sources, 3d the where vendor makes false representations upon which the vendee does not rely, but acts, alone upon information received from other sources. In the two first cases the vendee is entitled to recover any damages sustained, for the reason that the vendor's fraudulent act was the cause of the damages. In the last case, he cannot recover, because the vendor's fraudulent act was not the cause of the damages.—BECRAFT v. GRIST.

INJUNCTION—Legal Remedy.—When a party seeks relief by injunction from a judgment rendered against him in a court of general and competent jurisdiction, it should appear that he could not have remedied the ills of which he complains by the ordinary legal procedure, as by appeal or writ of error. Where he had a full and adequate remedy in the ordinary course of legal procedure, injunction will be denied.—WYMAN v. HARDWICKE.

MASTER AND SERVANT—Master's Liability to Strangers. —In an action for damages for personal injury, held, a hack driver, who, by an agreement with the owner of a line of hacks and horses, or his superintendent, runs a hack all night serving any one who choses to employ him, turns in the earnings on each following morning, and at the end of the week is to take, as his compensation, one-third of what he turned in during the week, and is subject to dismissal at any time by the owner or his superintendent, is the servant of the owner of the hack, and the owner is liable for damages resulting from negligence of the driver.—SANDIFER v. LYNN.

MECHANIC'S LIEN—Description of Property.—In an action to enforce a mechanic's lien, held that, where enough appears in the description of the property contained in the lien papers to enable a party, familiar with the locality, to identify the premises with reasonable certainty, to the exclusion of others, it will be sufficient. It is not necessary that the description be either full or precise.—FAIRBANKS, MORSE & CO. v. CRESCENT ELEVATOR CO.

MECHANIC'S LIEN—Lien Account.—In an action to establish a mechanic's lien held, where the account sued on is materially and substantially different from the account filed with lien, and is shown by the proof to be the true account, the account filed with the lien cannot be the "just and true account of the demand" required by Sec. 6709, Rev. St. [1889, and the lien must fail. The lienor must stand or fall by the lien which he files, and is not at liberty to defeat or postpone a prior lien or incumbrance by matter *in pais*.—POPPERT v. WRIGHT.

OFFICERS—De Facto—De Jure.—An ordinance passed by a common council at a meeting participated in by *de facto* councilmen, but for whose votes the ordinance would have failed of its passage, is valid. In cases of this kind the act of a *de facto* officer is entitled to the same weight as the act of an officer *de jure*. The act of the so called officer being contrary to law, the *de facto* principle is applied, and an act, otherwise void is validated. The rule of validation is precisely the same were there is no legal office as where there is no legal officer.—SIMPSON v. MCGONEGAL.

PLEADING — Practice.—In an action on an account the petition should contain or in lieu thereof, should have attached thereto and filed therewith, a statement of the items going to make up the alleged cause of action, to the end that the defendant may determine whether or not he has any good defense to any part of the amount claimed. A motion to require plaintiff to make petition definite and certain is the proper remedy.—CHILLICOTHE SAVINGS ASS'N. v. MORRIS.

PROMISSORY NOTE — Fraud.—Where a person, who has been deceived into signing and delivering a note, believing it to be a contract of a different character, aided the imposition by his own negligence, or if by exercise of due diligence he might have protected himself, he, and not the innocent holder of his paper, should suffer. Where such a party has not been guilty of negligence, he will be protected against a *bona fide* holder.—THE KALAMAZOO NATL. BANK v. CLARK.

PRACTICE—Motion for New Trial.—Whether a motion for a new trial is a necessary prerequisite to an appeal or not, if such motion is filed within the time allotted by law, it is a paper upon which the court has jurisdiction to act, and becomes a part of the cause to an extent sufficient to hold the judgment in suspense until it is determined, and a cause undisposed of will go to the succeeding term, though no formal order of continuance be entered.—HORN v. EXCELSIOR SPRINGS CO.